



# **BALANCING THE SCALES: IMPROVING FIJIAN WOMEN'S ACCESS TO JUSTICE**



**FWRM**  
FIJI WOMEN'S RIGHTS MOVEMENT

ISBN: 978-982-9000-13-2

Published November 2017.

This publication has been produced with the assistance of the European Union and UN Women Fiji Multi-Country Office.

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# Balancing the Scales: Improving Fijian Women's Access to Justice

**FIJI WOMEN'S RIGHTS MOVEMENT**  
November 2017





Photo credit: Kylepost photography

## Foreword from FWRM Research Team

The Fiji Women's Rights Movement (FWRM), which is a multiethnic and multicultural non-governmental organization, commissioned this research report. FWRM practices and promotes feminism, democracy, the rule of law, good governance and human rights.

FWRM's work in the area of Family Law began in 1991; it was a campaign that lasted twelve years with three different governments from 1993 to 2003. The campaign focused on the discriminating aspects of legislation, common law and legal practices when it came to women. The then proposed law suffered many setbacks either by the interruption to the rule of law or ideological opposition. The Family Law Act was finally enacted in October 2003 and came into force in 2005.

A decade later in 2015, FWRM and the Fiji Judiciary launched the second edition of the Family Law Act brochures and shared findings of a Scoping Study that was commissioned by FWRM in June 2015. The Scoping Study aimed to look at barriers faced by women when accessing the formal justice system and the findings were utilized to propose the current project on *"Balancing the Scales: Improving Fijian Women's Access to Justice."*

With this project through funding support by the Australian Department of Foreign Affairs and Trade, the European Union and UN Women, the FWRM Research Team conducted community consultations with women of all diversities across Fiji in 2016. The community consultations were supported by FemLink Pacific's divisional convening network as well as FWRM's community outreach.

In continuing FWRM's legacy on Family Law, we are delighted to work with our partners Diverse Voices and Action for Equality and Haus of Khameleon, sub- grantees of this project, to include the diverse women and build lasting sustainable movements that advocate for inclusive legislations for all women of Fiji.

FWRM hopes that the findings and recommendations of this research report will lobby policy makers in improving women's access to the formal justice system through gender-sensitive legislations and institutions that actively remove barriers and discrimination women face when dealing with issues related to violence and family law.

On behalf of the FWRM Research Team



Nalini Singh  
Executive Director FWRM





Photo credit: UN Women/ Lyndy Simpson



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The completion of this report was assisted by data and information provided by the following Fiji formal justice sector agencies, civil society and disabled persons organisations. The Research Team would like to thank everyone who has supported this research project by providing information and data.

#### Fiji Judiciary

The Honourable Anthony Gates, Chief Justice

#### Office of the Director of Public Prosecutions

Christopher Pryde, Director of Public Prosecutions

#### Fiji Police Force

Brigadier General Sitiveni Qiliho, Commissioner of Police

#### Legal Aid Commission

Mr. Shahin R Ali- Acting Director Legal Aid Commission

#### Ministry of Women, Children, Poverty Alleviation

Hon. Mereseini Vuniwaqa - Minister for Women, Children, Poverty Alleviation

#### Medical Services Pacific

Jennifer Poole, Executive Director

#### Other Organisations

Australian High Commission  
Delegation of the European Union for the Pacific  
Diverse Voices in Action for Equality  
Empower Pacific  
FemLink Pacific  
Fiji Bureau of Statistics  
Fiji Disabled Peoples Federation  
Fiji Law Society,  
Fiji Women's Crisis Centre  
Fiji Women Lawyers Association  
Haus of Khameleon  
International Centre for Advocates Against Discrimination  
Legal Practitioners Unit  
Pacific Women Shaping Pacific Development  
UNICEF  
UN Women Fiji Multi-Country Office  
UNDP Access to Justice Project





Photo credit: Kylepost photography



# Fiji

## Population Data<sup>1</sup>



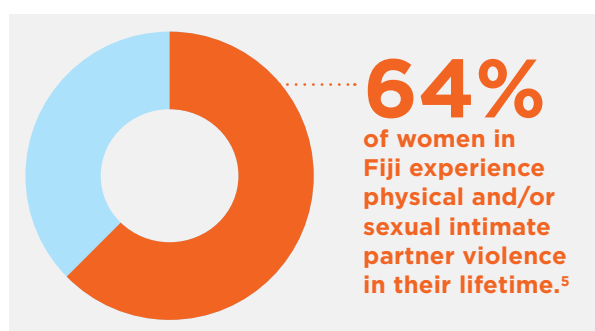


## Fiji Quick Facts<sup>2</sup>

### LANDMASS<sup>3</sup>

**18,272**  
square kilometres

**332 islands**  
(of which 106  
are inhabited)



### HUMAN DEVELOPMENT REPORT 2015<sup>6</sup>

**HUMAN DEVELOPMENT INDEX**  
**91 OUT OF 188 COUNTRIES**  
**GENDER INEQUALITY INDEX**  
**91 OUT OF 188 COUNTRIES**

### GDP<sup>7</sup>

per capita USD \$6,667



1 in 3 women are  
employed in Fiji



### POPULATION<sup>4</sup>

**865,611**



51% MALE

49% FEMALE

34% CHILDREN  
(under 18 years)

### POPULATION LIVING IN RURAL AREAS



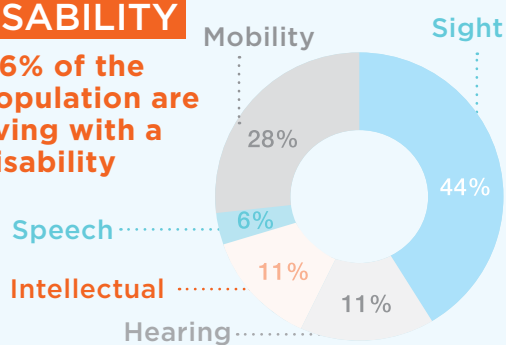
**49.5%**  
RURAL



**50.5%**  
URBAN

### DISABILITY

**7.6% of the  
population are  
living with a  
disability**



## SOCIAL PROTECTION PROGRAMMES

**If a  
woman is  
eligible  
for the:**



#### Poverty Benefit Scheme<sup>8</sup>

She will be eligible to receive a maximum allowance of \$177 comprising cash support and food vouchers depending upon the number of household members.



#### Social Pension Scheme

For people above the age of 65 years will receive \$100 monthly allowance.



#### Food Voucher Programme<sup>9</sup>

A pregnant woman living in a rural area will receive a \$50 monthly food voucher for 10 months.



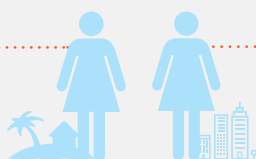
#### Disability Allowance

Will receive a \$90 monthly allowance.

## POVERTY LINE IN FIJI<sup>10</sup> BASIC NEEDS POVERTY LINE ESTABLISHED

**\$49.50**

for a woman living in  
an rural area



**\$55.12**

for a woman living in  
an urban area



**3 OUT OF 10 PEOPLE LIVE BELOW  
THE BASIC NEEDS OF POVERTY  
LINE IN FIJI**



**RISES TO 5 OUT OF 10 PEOPLE  
IN THE RURAL AREAS OF THE  
NORTHERN DIVISION**

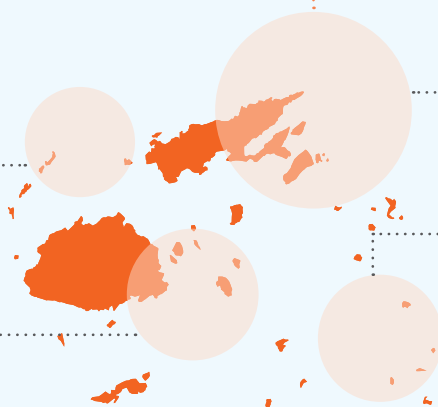
### Incidence of poverty for rural population

Rural Western

**3 OUT OF 10**

Rural Central

**4 OUT OF 10**



Rural Northern

**5 OUT OF 10**

Rural Eastern

**4 OUT OF 10**

## COSTS OF JUSTICE



**\$50  
FJD**

**Weekly Per Capita  
Adult Income for  
a woman living on  
the basic needs  
poverty line**

**TO INITIATE OR DEFEND A CASE, IT  
COSTS A WOMAN:**



+



**\$50 COURT  
FJD FEE**  
in the Family Court

=



**x1  
WEEKLY  
INCOME**



+



**\$100 COURT  
FJD FEE**  
in the High Court

=



**x 2  
WEEKLY  
INCOME**

## Balancing the Scales

## Improving Fijian Women's Access to Justice

## Gender Balance in Parliament and Formal Justice Sector Agencies:

Agency	Male	Female	Total
Parliament <sup>11</sup>	43 (84%)	8* (16%)	51
Supreme Court <sup>12</sup>	7 (87%)	1 (13%)	8
Court of Appeal <sup>13</sup>	12 (100%)	0	12
High Court <sup>14</sup>	25 (93%)	2 (7%)	27
Family Court Division* <sup>15</sup>	2 (33%)	4* (67%)	6
Magistrates' Court <sup>16</sup>	19 (68%)	9 (32%)	28
Fiji Police Force	3,211 (79%)	833 (21%)	4,044
Office of the Public Prosecutor: Prosecutors <sup>17</sup>	16 (42%)	22 (58%)	38
Legal Aid Commission: Lawyers <sup>18</sup>	21 (32%)	45 (68%)	66

*\*Inclusive of the Speaker of the House*

*\*Family Court Division is inclusive of the High Court and Magistrate Court jurisdiction. The four women include one High Court Civil Judge.*



## Legislation and Relevant National Policies

### Legislative framework (including National Policies)

No Drop Policy <sup>19</sup>	Introduced 'No Drop Policy' in 1995 requiring police and prosecutors to bring all domestic violence cases to court.
Family Law Act 2003 <sup>20</sup>	<p>A specialist Family Division of the High Court and Magistrates Court Introduced:</p> <ul style="list-style-type: none"> <li>• No Fault Divorce</li> <li>• Counselling Services</li> <li>• Maintenance (Child, Spousal, Parental) Protection Orders- section 202</li> </ul>
Employment Relations Promulgation 2007	Institutes employer liability if they fail to prevent sexual harassment in the workplace
National Policy on Sexual Harassment in the workplace 2008 <sup>21</sup>	Outlines types of sexual harassment, and employer's and worker's responsibilities in addressing sexual harassment.
Zero Tolerance Violence Free Communities 2008 <sup>22</sup>	Government campaign enforced by the Ministry of Women, Children & Poverty Alleviation, targeted at eliminating all forms of Violence Against Women and Children at the community level. <sup>23</sup>
Crimes Act* 2009 <sup>24</sup>	Expands the definition of Rape and increases the maximum penalty to life imprisonment.
Criminal Procedure Act* 2009 <sup>25</sup>	<p>No corroboration required in sexual offence cases (s129)</p> <p>No evidence of past sexual history permissible (s130)</p>
Domestic Violence Act* 2009 <sup>26</sup>	Introduces Domestic Violence Restraining Orders (DVRO)
Human Rights Commission Act* 2009 <sup>27</sup>	Acknowledges sexual harassment as a prohibited ground of discrimination (section 19(2)).
Sentencing & Penalties Act* 2009 <sup>28</sup>	Legislates established Sentencing Guidelines or tariffs previously determined through common law.
Child Welfare Act* 2010 <sup>29</sup>	<p>Requires mandatory reporting of cases of child abuse by health professionals, welfare officers, police and lawyers (ss2, 3)</p> <p>Focuses on the five thematic areas:</p> <ol style="list-style-type: none"> <li>formal sector employment and livelihood;</li> <li>equal participation in decision making;</li> <li>eliminating of violence against women and children;</li> <li>access to basic services; and</li> <li>women and the law.</li> </ol>
Women's Plan of Action (2010-2019) <sup>30</sup>	
Family Law Amendment Act 2012 <sup>31</sup>	Amended s 154 of the <i>Family Law Act</i> 2003 to include couples in de facto relationships.
Constitution 2013 <sup>32</sup>	<p>Section 26 on <i>Right to Equality and Freedom from Discrimination</i> Subsection (3) expands on the grounds of non-discrimination and includes "gender sexual orientation, gender identity and expression"</p>
National Gender Policy 2014 <sup>33</sup>	Formulated to promote women's human rights in all aspects of Fiji's development in compliance with CEDAW

\* Act No. 31 – Revised Edition of the Laws (Consequential Amendments) Act 2016 s 107(b)(i) reference made to any "Decree" will now be replaced with the word "Act".





Photo credit: UN Women/Lyndy Simpson. July 2014

# Transparency Overview

## Annual Reports

● No ● Yes

Agency or Organisation	2011	2012	2013	2014	2015	2016	Accessible as hard copy documents or on the Internet
Courts	●	●	●	●	●	●	Annual Reports not available on the court website
Office of the Director of Public Prosecutions	●	●	●	●	●	●	Odpp.com.fj
Fiji Police Force	●	●	●	●	●	●	<a href="http://www.parliament.gov.fj/getattachment/Parliament-Business/Annual-Reports/Annual-Report.pdf.aspx">http://www.parliament.gov.fj/getattachment/Parliament-Business/Annual-Reports/Annual-Report.pdf.aspx</a>
Legal Aid Commission	●	●	●	●	●	●	Annual Reports not publicly available on the Legal Aid Commission website. Data provided to FWRM Research Team
Ministry of Women, Children and Poverty Alleviation	●	●	●	●	●	●	<a href="http://www.welfare-women.gov.fj/index.php/resources/annual-reports.html">http://www.welfare-women.gov.fj/index.php/resources/annual-reports.html</a>
Fiji Women's Crisis Centre	●	●	●	●	●	●	Annual Reports not available on the FWCC website
Medical Services Pacific	●	●	●	●	●	●	<a href="http://msp.org.fj/reports/">http://msp.org.fj/reports/</a>
FWRM	●	●	●	●	●	●	<a href="http://fwrn.org.fj">http://fwrn.org.fj</a>



## Capacity to Collect and Present Sex Disaggregated Data



Agency or Organisation	Sex disaggregated data collected on:	Frequency sex disaggregated data compiled	Sex disaggregated data presented
Courts	Sex of the: <ul style="list-style-type: none"> <li>applicant and respondent in civil cases</li> <li>applicant in domestic violence restraining order cases</li> <li>alleged perpetrator in criminal cases.</li> </ul>	Monthly	Not publicly available. Data provided to FWRM Research Team
Office of the Director of Public Prosecutions	The ODPP collects sex disaggregated data as it refers to the sex of certain alleged perpetrators and victims in the narrative section of the Monthly Updates. However, the ODPP does not currently present sex disaggregated data in the monthly media updates on Rape and Sexual Offences Statistics or Serious Crime (Non-Sexual Violence Offences) Statistics.	Monthly	Monthly media releases on <a href="http://odpp.com.fj/">http://odpp.com.fj/</a>
Fiji Police Force	Collects sex disaggregated data on the victim and alleged perpetrator of crimes reported.	Daily	Annual data presented on the Fiji Bureau of Statistics website: <a href="http://www.statsfiji.gov.fj/latest-releases/key-stats">http://www.statsfiji.gov.fj/latest-releases/key-stats</a> And Fiji Bureau of Statistics Fiji Facts and Figures
Legal Aid Commission	Clients who receive grants of legal aid.	Unknown	Not publically available

## Cases Published on PacLII

● No ● Yes

	2011	2012	2013	2014	2015	2016	2017*	
Supreme Court Criminal Case	●	●	●	●	●	●	●	<a href="http://www.paclii.org/fj/cases/FJSC/">http://www.paclii.org/fj/cases/FJSC/</a>
Number of cases published on PacLii	6	13	13	10	29	39	10	
Court of Appeal Criminal Case	●	●	●	●	●	●	●	<a href="http://www.paclii.org/fj/cases/FJCA/">http://www.paclii.org/fj/cases/FJCA/</a>
Number of cases published on PacLii	21	52	81	184	137	139	61	
High Court Criminal Case	●	●	●	●	●	●	●	<a href="http://www.paclii.org/fj/cases/FJHC/">http://www.paclii.org/fj/cases/FJHC/</a>
Number of cases published on PacLii	342	344	389	512	525	567	241	
High Court Family Cases	●	●	●	●	●	●	●	Not on PacLII as the cases are not yet anonymised or redacted to remove the parties' names.
Number of cases published on PacLii	0	0	0	0	0	0	0	
Magistrates Court Criminal Cases	●	●	●	●	●	●	●	
Number of cases published on PacLii	115	247	296	114	116	208	67	
Magistrates Court Family Cases	●	●	●	●	●	●	●	<a href="http://www.paclii.org/fj/cases/FJMC/">http://www.paclii.org/fj/cases/FJMC/</a>
Number of cases published on PacLii	0	0	0	0	0	0	0	Not on PacLII as the cases are not yet anonymised or redacted to remove the parties' names.

\*Until August 2017

## Abbreviations

<b>CEDAW</b>	Convention on the Elimination of All Forms of Discrimination Against Women
<b>CJ</b>	Chief Justice
<b>CR</b>	Chief Registrar
<b>CSO</b>	Civil Society Organisation
<b>DIVA</b>	Diverse Voices and Action for Equality (DIVA For Equality)
<b>DR</b>	Deputy Registrar
<b>DVRO</b>	Domestic Violence Restraining Order
<b>FLA</b>	Family Law Act
<b>FPF</b>	Fiji Police Force
<b>FWCC</b>	Fiji Women's Crisis Centre
<b>FWRM</b>	Fiji Women's Rights Movement
<b>HOK</b>	Haus of Khameleon
<b>KII</b>	Key Informant Interviews
<b>LAC</b>	Legal Aid Commission
<b>LGBTQI</b>	Lesbian, Gay, Bisexual, Transgender, Queer and Intersex
<b>MSP</b>	Medical Services Pacific
<b>ODPP</b>	Office of the Director of Public Prosecutions
<b>PacLII</b>	Pacific Islands Legal Information Institute
<b>VAW</b>	Violence Against Women



## Executive Summary

Fiji Women's Rights Movement (FWRM) was instrumental in drafting and advocating for the Fiji Parliament to pass the Family Law Act in 2003. Six years later, FWRM was also involved in advocacy that led to the enactment of the Domestic Violence and Crimes Acts in 2009.

More than a decade after the commencement of the Family Court in 2005, FWRM has undertaken this research project with the aim of understanding the barriers that still prevent women from accessing the formal justice system and ways to improve the quality of services delivered to women when they interact with formal justice sector agencies for their family law matters and in cases involving violence against women and children.

*The Balancing the Scales: Increasing Fijian Women's Access to Justice* research project commenced in November 2016 and has been supported by funding from the Australian Department of Foreign Affairs and Trade, the European Union and UN Women.

The FWRM Research Team has analysed data gathered through eight complementary research methodologies ranging from discussions with formal justice sector agencies and CSOs working with women and children on family law and violence matters in the Northern, Western and Central Divisions of Fiji to analysing data supplied by formal justice sector agencies as well as reviewing almost 500 decisions of the Fiji Courts. Separate surveys of legal practitioners and women who sought to address their violence or family law issues through the formal justice system have also been undertaken. Finally the FWRM Research Team has observed court proceedings and registries in several locations across Fiji. The methodological approach is described further on page 33.

In *Quick Facts Fiji* the research team has provided a picture of the lives of women and girls across Fiji and the socio-demographic factors that may affect their ability to access family law services when court fees are charged. In rural areas of Fiji in the Northern, Eastern and Central Divisions, between 4 and 5 out of 10 women and men live on or below the Fiji basic needs poverty line. A woman living on the basic needs poverty line has an income of around FJD 50 a week, therefore the FJD 50 court fee in the Family Court or the FJD 100 court fee in the High Court of Fiji would be beyond her financial means.

In *Transparency Overview* the research team has presented a snapshot of which formal justice sector agencies and CSOs have published Annual Reports on their work over the last six years and have the capacity to collect and present sex disaggregated data. Another form of transparency and accountability is the publication of court judgments. The Fiji Judiciary published more than 1000 cases on PacLII in 2016 and is committed to the swift publication of criminal court cases on PacLII, often within one week of the case being decided in court. The Fiji judiciary does not publish any family law cases on PacLII as these cases are not yet redacted or anonymised to remove the parties' names.

In *Family Law and Violence Against Women and Children Cases: The Data*, the FWRM Research Team has analysed and presented sex disaggregated data from the Fiji Police Force, the Office of the Director of Public Prosecutions, the Courts and the Legal Aid Commission showing trends over the last 5-10 years. The data shows that in all categories of Sexual Offences cases (rape and attempted rape cases, indecent assault, child sexual abuse cases) reported by women and girls to the Fiji Police, the number of cases increased from 2009 to 2012 and then decreased from 2012 to 2015. Women and girls are the victims/ survivors in 9 out of 10 cases reported to the Fiji Police in all categories of Sexual Offences cases while men are the perpetrator in 9 out of 10 violence and sexual violence cases.

From 2012-2016 the Legal Aid Commission has assisted twice as many men as women due to the fact that the majority of accused in criminal cases are men. More than 6000 women initiated family law or domestic violence restraining order applications in the Fiji courts in 2016. Only 1 in 3 of these women were represented by the Legal Aid Commission.

Women and men initiate similar numbers of divorce cases in Fiji. However, women initiate 9 out of 10 maintenance cases and 7 out of 10 restraining order applications filed in the Family Court and Magistrates Court. Over the last five years the number of women bringing applications for restraining orders has more than doubled.

State Counsel working for the Office of the Director of Public Prosecutions have provided support to women victim/ survivors with a disability to adequately prepare them for court hearings that are stressful and difficult to understand. As a result the witness has successfully presented evidence and the judge has found the accused guilty.

In *Case Analysis of Court Decisions* the FWRM research team has reviewed hundreds of family law cases and found no instance where gender stereotypes, customary forms of reconciliation or other contentious factors were raised by the judicial officer. Similarly, in none of the 89 rape cases decided in 2016 and 2017 in the High Court has the FWRM research team found that the judicial officer has raised customary forms of reconciliation in their judgment. In 18 of the 89 rape cases decided in 2016 and 2017 in the High Court the judicial officer reduced the sentence for the accused on the basis that the accused was a 'sole breadwinner'.

In *Medical Services Pacific Sexual Assault Response Clients*, a rape kit was sent to the Forensic Pathology Unit of the Fiji Police Force in 42 of the 55 (76%) rape cases referred by the Fiji Police Force to Medical Services Pacific in 2015 and 2016. In none of the 67 rape cases decided in the High Court in 2016 and published on PacLII was forensic evidence presented in the case. This report recommends that there be consideration given by the Fiji judiciary, Fiji Police Force, Office of the Director of Public Prosecutions and the Ministry of Health to strengthening the procedures that apply to the collection and use of forensic evidence in violence against women and children cases.

In *Surveys on Women's Experience of the Formal Justice System*, 96% of legal practitioners surveyed believed that access to the formal justice system for women in Family Law and violence matters has improved since the introduction of the *Family Law Act and Domestic Violence and Crimes Acts*. 91% of legal practitioners surveyed believed that the quality of legal outcomes for women has improved and 83% of legal practitioners surveyed believed that the enforcement of legal outcomes for women has improved.

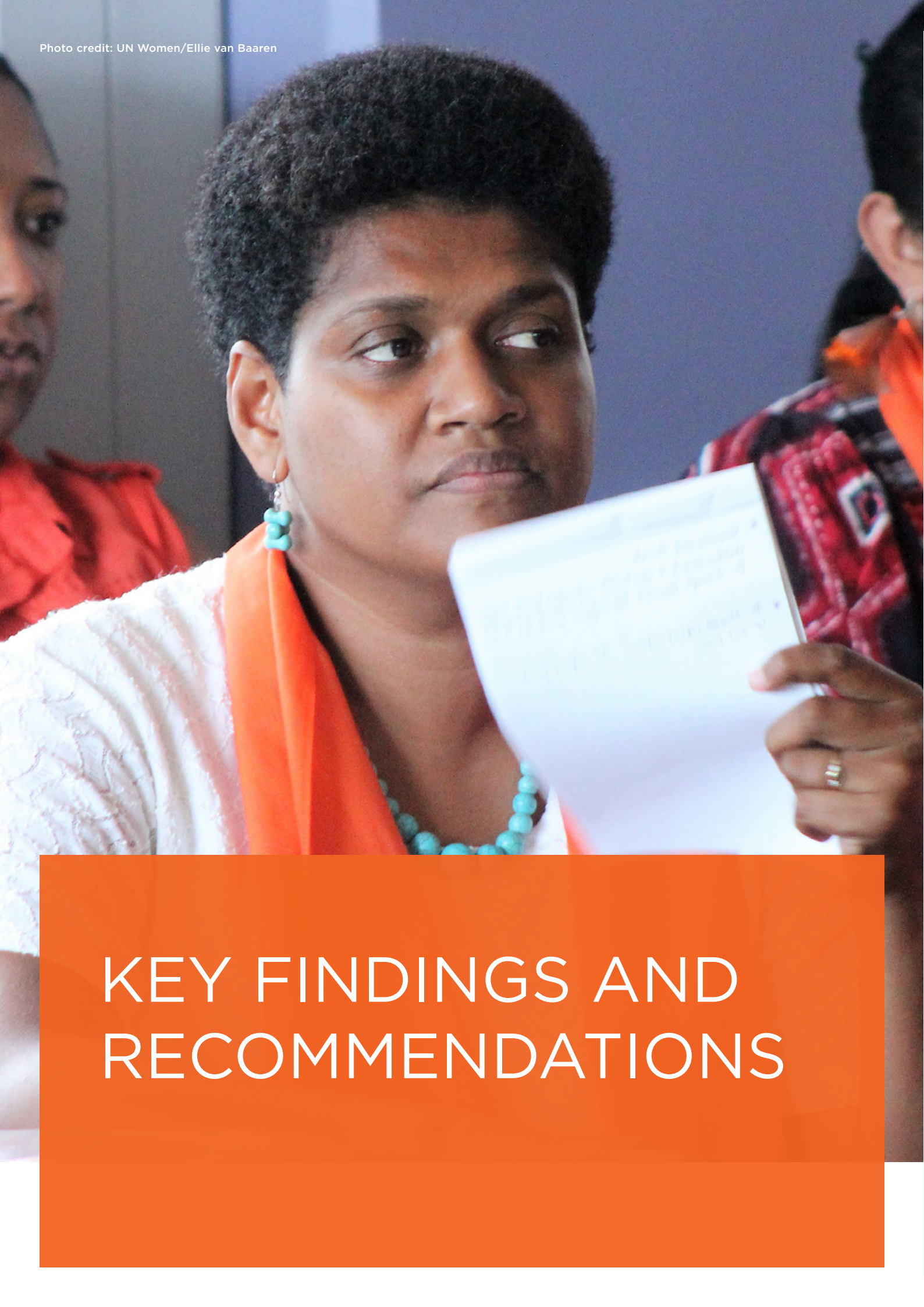
The women surveyed by FWRM experienced violence for an average of 868 days before they went to the police or courts to resolve these issues. Half of the 45 women that had accessed the police or court stated they wanted the violence to stop. Two in three women surveyed faced difficulties in going to the police as they reported that the police told them to resolve the issue within the family or village or the police did not take what they said seriously. For the women surveyed who did access the courts, nine in ten women were successful in obtaining a domestic violence restraining order, child custody or maintenance order, or divorce.

In *Key Findings and Recommendations* the FWRM Research Team has collated the recommendations drawn from the research project and presented their assessment of whether the recommendations can be implemented quickly, within 12 months or in a time frame longer than 12 months.

FWRM is committed to continuing some of research approaches in the coming years as part of its contribution to ensuring that law reform works to reduce discrimination faced by women and girls and increase access to services to ensure their security and protection and just resolution of family and violence cases. FWRM will continue its analysis of High Court and Magistrates Court cases of certain family law and violence against women and children cases. The FWRM Research Team will also continue to conduct the survey of women who sought to address their violence or family law issues through the formal justice system to understand the motivations and barriers women face in bringing these cases to court. FWRM will also continue to update the Transparency Overview each year to present information on how the four formal justice sector agencies and other related ministries and CSOs report and publish Annual Reports, sex disaggregated data, judgments as well as media releases or other information on their work.

The FWRM Research Team would like to thank all those who have contributed to this report. It is hoped that the Minister for Women, Children and Poverty Alleviation and heads of the formal justice sector agencies will discuss the recommendations put forward and consider their implementation in order to reduce the barriers that women face in accessing services related to security, protection and justice and improve the quality and integrated nature of services provided to women for cases brought under the Family Law, Domestic Violence and Crimes Acts.





# KEY FINDINGS AND RECOMMENDATIONS

## 12 Key Findings

### Key Finding 1

#### Women Victim/Survivors of Sexual Violence

Women and girls are the victims/ survivors in 9 out of 10 cases reported to the Fiji Police in all categories of Sexual Offence cases.

Men represent 9 out of 10 offenders in cases of Offences Against the Person and Offences Against Morality reported to the Fiji Police.

### Key Finding 2

#### Child Victim/Survivors in Rape Cases

In 2016 the Office of the Director of Public Prosecutions Rape and Sexual Offences Statistics shows that rape accounts for 71% of the sexual offences cases prosecuted. Children under 18 years of age are the victim/survivors in 59% of rape cases prosecuted.

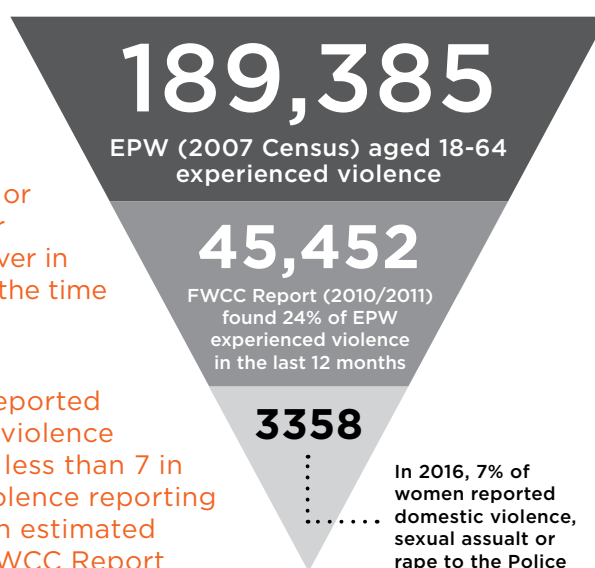
### Key Finding 3

#### Reporting of Violence

Fiji Women's Crisis Centre in its 2010/2011 survey on Women's Health and Life Experiences in Fiji (Somebody's Life, Everybody's Business, FWCC 2013) found that the combined prevalence of non-partner and intimate partner violence in Fiji (71%) is double the global estimate of 35.6%. The report also found that 24% of women (almost one in 4 women) in an intimate relationship experienced physical and/ or sexual violence in the last 12 months, or 45,452 women aged 18-64 who were ever in an intimate relationship with a man, at the time of the 2007 Census.

However, in 2016, only 3358 women reported domestic violence, sexual or physical violence matters to the police. This represents less than 7 in 100 women (7%) who experienced violence reporting this to the police based on the women estimated to have experiences violence in the FWCC Report [N=45,452 ].

37% of women who accessed the counselling and legal support services provided by FWCC reported the sexual or physical violence they experienced to the police in 2017.



\*Ever Partnered Women (EPW)

**Key Finding 4****Cost of Justice (Filing Fees)**

The cost of filing a civil or family law case is a barrier to women seeking access to the justice system in Fiji. The incidence of poverty faced by men and women across Fiji varies from 27% in the Western Division to 53% in the Northern Division. The average cost for a woman to bring or respond to a family law matter in the Family Court is equal to the weekly income of a woman living on or around the Basic Needs Poverty Line. The average cost in the High Court is twice the weekly income of a woman living on or around the Basic Needs Poverty Line.



There is no information displayed in Court Registries on the waiver of court fees for women who face financial hardship.

**Key Finding 5****Cost of Justice (Transportation)**

While the four formal justice sector agencies have seen increases in their budgets in the last 3 financial years, this has not translated into greater access for women victim/ survivors of violence in rural areas.

50% of Fiji's population lives in rural areas, however only 116 criminal cases and 2 DVRO cases were heard at Island Court hearings in 2016.

No High Court hearings are heard outside Suva, Lautoka and Labasa. For women living in rural areas facing high levels of poverty, the transportation costs in addition to court filing fees place access to the High Court beyond the reach of most women.

**Key Finding 6****Lack of Victim Support Services**

The Director of Public Prosecutions and other key stakeholders highlighted the lack of integrated and specialist support services available for women and children victim/ survivors in Fiji before, during and after court proceedings.



**Key Finding 7****Access to Justice for Women Living with a Disability**

8% of the population of Fiji are living with a disability. The case studies in *Balancing the Scales: Improving Fijian Women's Access to Justice*, highlight selected examples of formal justice sector agencies collaborating to provide a high level of support and services to women living with a disability to enable their effective participation in court proceedings on an equal basis.

All formal justice sector agencies noted that there is a lack of information available to Disabled Persons Organisations and people living with a disability on services that can be provided by all four formal justice sector agencies to enable the effective participation of women living with a disability in family law and violence court proceedings.

**Key Finding 8****Outcomes for Women in Court**

Two thirds of women surveyed by FRWM (64%) went to other people or organizations to seek help before they went to the police or courts yet only 6% said that this had fully resolved their issues. However, for those women whose cases had been finalized in the courts, 9 out of 10 women obtained the outcome that they had sought from the court.

Rape cases heard in the High Court in 2016 (and published on PacLII representing 86% of all rape cases decided by the High Court in 2016) resulted in a 90% rate of conviction of the accused on a charge of rape and an average final sentence of 10 years and 10 months.

- In a further 8% of these rape cases the accused was found guilty of a lesser charge
- In 2% of these rape cases the accused was acquitted

**Key Finding 9****Mitigation Plea – 'Sole Breadwinner'**

In 27% of rape cases decided in 2016 (and published on PacLII) the judicial officer reduced the sentence for the offender on the basis that the offender was a "sole breadwinner". In 3% of rape cases the judicial officer did not allow this to form the basis of a sentence reduction based on the case authority *Raj v State* decided in March 2014 in the Court of Appeal. *Raj v State* established that an offender being a sole breadwinner did not constitute a legitimate basis for the mitigation of the offender's sentence.

**Key Finding 10****Sex Disaggregated data – Collection and Publication**

All formal justice sector agencies (Fiji Courts, Office of the Director of Public Prosecutions, Legal Aid Commission and Fiji Police Force) are collecting sex disaggregated data on cases involving violence against women and girls. None of these agencies published either a 2015 or 2016 Annual Report.

There is a lack of integrated and regular analysis of this data by the four formal justice sector agencies with a view to improving access and outcomes for women who bring their cases to the formal justice system.

**Key Finding 11****Transparency of Judgments**

The Fiji Courts are committed to the swift publication of High Court criminal cases on PacLII. PacLII is an essential mechanism for judicial transparency in Fiji and across the Pacific region.

Fewer criminal decisions of the Magistrates Court are available on PacLII making it harder to research sexual assault cases heard in this court.

In 2016 the Fiji the Family Court Division of the Magistrates Court published 5 family law judgments on PacLII representing less than 1 in a 1000 cases decided by that court in 2016.

**Key Finding 12****Capacity Building**

Three of the four heads of formal justice sector agencies acknowledge the need for uniform and integrated capacity building in order to improve the delivery of high quality services for women when they bring their cases to the formal justice system, including training in the following areas:

- Domestic violence restraining orders
- Collection and use of forensic evidence

# Recommendations

● Quick Implementation   ● Implementation within 12 months   ● Implementation takes longer than 12 months

## Recommendations for the Fiji Courts

### 1 The Fiji Judiciary to consider collecting and publishing the following data:

- number of cases heard at island court sittings
- number of DVRO applications that are granted or not granted by the Family Court and Magistrates Court each year
- number of applications for a waiver of a court fee due to financial hardship and whether these are granted or not granted
- how the parties are represented: self-represented, private lawyer, pro bono lawyer, Legal Aid Commission
- the average duration from filing to finalisation of different categories of family law and violence against women and children cases.

### 2 ● The Fiji Courts consider publishing annually on its website court data presenting trends over time, including sex disaggregated data.

### 3 The Fiji Courts consider the following in relation to service delivery:

- providing duty solicitors/ community helpdesks at court registries to assist clients to complete court forms
- providing disability inclusive service information
- reviewing court forms with a view to simplifying the form
- displaying information on the waiver of Court fees for Court clients who face financial hardships in each Court Registry
- alerting lawyers and clients via text message if their hearing is postponed
- pre-trial conferences with Counsel to narrow issues in dispute and to better prepare the case for trial
- separate waiting area for women that have a DVRO application to be heard in Court



### Recommendations for the Fiji Courts cont.

- hearing appeals to the High Court in the same location the matter was heard at first instance in order to address the barriers of cost and distance raised by women victim/survivors
- providing standard operating procedures and training to Court registry staff so they provide clear and uniform information to court clients
- separate child-friendly waiting room in the court registry for women with children
- conducting an audit of all court registries to see whether they meet the minimum standard for people with disabilities. Consider installing ramps, elevators or arrange alternative court hearing rooms at ground level to assist women and men with a mobility impairment.

## 4 The Fiji Courts consider publishing annually:

- a summary of the feedback it receives from its own customer feedback mechanisms as well as surveys conducted externally to the court that seek client and court stakeholder feedback on the services provided by the court
- how it intends to respond to this feedback.

## 5 The Chief Justice consider a Practice Direction instructing judges and legal practitioners that the following will not be considered as mitigating factors and nor will a sentence reduction be provided in cases of sexual and other forms of violence, where the perpetrator:

- is appearing before the court for the first time but the perpetrator has been charged and found guilty of multiple counts of violence over a number of years
- is the sole breadwinner in the family (based on the case authority *Raj v State* decided in March 2014)<sup>34</sup>

## 6

- **Judgments in the Magistrates Court related to cases of rape and attempted rape, sexual assault, indecent assault and child sexual abuse should be published on PacLII (with redaction/ anonymisation where required).**

## 7 The Fiji Courts and Ministry of Women, Children & Poverty Alleviation should consider ways to increase the number and collaborate on the training of social welfare officers who are able to provide the court with reports in cases of:

- Adoption
- Family law
- Criminal cases involving child perpetrators
- Criminal cases victim survivor/witnesses

### Recommendations for the Fiji Police

## 1 The Fiji Police Force consider collecting and publishing the following data:

- number of violence against women cases involving referrals from or to support services that provide medical, counselling and legal services
- number of rape kits processed by the Forensic Pathology Unit of the Fiji Police Force
- outcomes for violence against women cases tracking cases from the initial police incident report to police charges laid to ODPP indictments

## 2 The Fiji Police to consider the following in relation to service delivery:

- providing standard operating procedures to police officers so they provide clear and uniform information to women and girls reporting violence
- clear and uniform information to the public regarding DVRO application and processes
- providing disability inclusive service information

## 3 ● Provide adequate resourcing to frontline officers to ensure efficient service of domestic violence restraining orders.

## 4 ● The Fiji Police provide training to police officers on Domestic Violence Restraining Orders (DVRO), including the requirements and process for making a DVRO application

## 5 ● The Fiji Police Force and other formal justice sector agencies consider trends in the reporting of domestic violence offences to the police across Fiji and the number of domestic violence restraining orders as well as domestic violence criminal cases brought to the courts in order to improve the delivery of services that protect women and children from domestic violence.

## Recommendations for the Office of the Director of Public Prosecutions

### 1 The ODPP consider presenting and publishing the following data on an annual basis:

- Sex disaggregated data on Rape and Sexual Offences Statistics and Serious Crime (Non-Sexual Violence Offences) Statistics, for its current data fields of:
  - total number of victims
  - number of victims under 18 years
  - total number of accused persons
  - number of accused persons under 18 years
- Aggregate data from January- December so that it can be analysed against the Fiji Police Force data presented annually on the Fiji Bureau of Statistics website
- Outcomes for violence against women cases tracking cases from police charges laid to ODPP indictments to outcome at trial

### 2 Consideration be given to the reform of the following laws:

- Abduction with intent to commit rape *Crimes Act*, Section 211 – in circumstances where the girl is aged 16-18 years of age and the sexual activity is consensual
- Indecently annoying any person [Crimes Act Section 213– this is the main offence contained in the category of offences grouped as Other Against Public Morality. These cases have increased 700% from 309 in 2009 to 2491 in 2014 with male victims accounting for 44% of the Other Offences Against Morality cases in 2014

## Recommendations for the Legal Aid Commission

### 1 The Legal Aid Commission consider presenting the following data:

- The number of applications requested for legal aid disaggregated by type of case (criminal, family, civil) and sex of the applicant
- The number of cases in which legal aid is granted disaggregated by type of case (criminal, family, civil) and sex of the applicant
- The number of women and men living with a disability that apply for a grant of legal aid

### 2 The Legal Aid Commission consider providing:

- disability inclusive service information to the public
- clear and uniform information to the public regarding DVRO application and processes



**Recommendations for the Legal Aid Commission cont.**

- 3** ● The Legal Aid Commission consider revising the bail and mitigation instruction sheet for its Legal Aid Commission defence counsel to remove sole breadwinner as a mitigating factor.

**Recommendations for Civil Society Organisations****Fiji Women's Rights Movement**

- 1** Continue its collaboration with the Fiji Courts on the presentation and publication of case data that presents 5-year trends for different types of family law and violence against women and children cases. Including:

- Cases filed and finalized
- Average duration of a case from filing to finalisation
- Outcome of case
- Number of cases heard at Island Court sittings
- How parties are represented: self-represented, private lawyer, pro bono lawyer, Legal Aid Commission
- Number of DVRO applications that are granted/not granted by the Family Court and Magistrates Court annually
- Number of applications for a waiver of a court fee due to financial hardship and whether these are granted/not granted

- 2** Continue its analysis of High Court and Magistrates Court cases of certain family law and violence against women and children cases to present:

- Data on whether gender stereotypes or cultural reconciliation are raised by the judicial officer and lead to a sentence reduction for the perpetrator
- Positive and negative gender equality messages conveyed by the judicial officer in their judgments so they these may be used in any leadership or capacity building sessions for judicial officers

- 3** ● Continue to conduct the survey of women who sought to address their violence or family law issues through the formal justice system to understand the motivations and barriers women face in bringing these cases to court

- The Attorney General consider establishing the Family Law Council provided under Article 204 of the Family Law Act ensuring that representatives from all the relevant legal sector agencies are included

### Recommendations for Civil Society Organisations cont.

#### 4 Update the Transparency Overview each year to present information on how the four formal justice sector agencies and other related ministries and CSOs report and publish:

- Annual Reports
- Sex disaggregated data
- Judgments
- Media releases or other information on their work

#### 5 ● Analyse the rate and outcome of appeals in sexual offences cases and present trends, key findings and recommendations to the Fiji Courts and other formal justice sector agencies

### Minister for Women, Children and Poverty Alleviation and the Commissioner for Police

#### 1 ● Consider the possible impact of the Zero-Tolerance Violence Free Communities on the drop in reporting of all categories of sexual offences from 2012

### Recommendations for all Key Justice Sector Agencies

#### 1 ● All formal justice sector agencies publish Annual Reports that contain sex disaggregated data and information

#### 2 ● All formal justice sector agencies provide clear and uniform information to the public regarding DVRO application and processes

#### 3 All formal justice sector agencies provide the following for all staff:

- Disability awareness training focussed on attitudes, myths and stereotypes. This training should highlight the cases in which the agency provides outstanding support services to women and girls with a disability
- Gender sensitivity training to ensure that all staff have an understanding of the key principles and how these underpin their work. The training should highlight cases in which the agency provides outstanding support services to women and girls victims/survivors of domestic violence
- Violence Against Women training emphasising the 'No Drop Policy' and the inappropriate use of reconciliation when dealing with Domestic Violence complaints
- Training on DVROs, including the requirements and process for making a DVRO application

- 4 • All formal justice sector agencies report and publish the number of staff who have undertaken this training
- 5 • All formal justice sector agencies provide disability inclusive service information to the public
- 6 • The Fiji Courts, Fiji Police Force, Office of the Director of Public Prosecutions and the Ministry of Health collaborate to strengthen the procedures that apply to the collection and use of forensic evidence in violence against women and children cases
- 7 • The Minister for Women, Children & Poverty Alleviation convene the Women and Law Taskforce



Photo credit: Kylepost photography



# RESEARCH METHODOLOGY



## Research Methodology

Fiji Women's Rights Movement, supported by the Australian Department of Foreign Affairs and Trade, the European Union, and UN Women, commenced the research project: *Balancing the Scales: Improving Fijian Women's Access to Justice in November 2016*.

The aim of the research is to foster an enabling environment for increasing women's access to the formal justice system with a focus on family law matters and violence against women and children.

Key research questions included:

- What are institutional best practices in implementing the Family Law, Domestic Violence and Crimes Acts in Fiji?
- What are institutional or systemic challenges in implementing the Family Law, Domestic Violence and Crimes Acts in Fiji?
- How do social norms affect women's access to the formal justice system in Fiji?

This research will be used to identify barriers that women face in accessing services related to security, protection and justice, under the Family Law, Domestic Violence and Crimes Acts.

### Components of the Research Methodology

#### I Key Informant Interviews

Discussions with formal justice sector agencies and CSOs working with women and children on family law and violence matters in the Northern, Western and Central Divisions of Fiji.

#### II Data Analysis

Violence against women and children and family law cases analysed from all formal justice sector agencies from 2007-2016 (or available data)

#### III Case Analysis - Medical Services Pacific clients

Analysed 195 sexual assault response cases referred by the Fiji Police Force to MSP in 2015 and 2016.

#### IV Case Analysis - Court Decisions

##### Family Law Case Analysis

- i. Analysed 260 Family Court Appeal and First Instance cases decided in the in the High Court from 2007-16 to consider:
  - where the case is heard,
  - sex of the appellant, and
  - how they are represented in their case.
- ii. A detailed analysis of a randomised sample of 25% of these Family Court cases (67 of the 260 cases) to identify whether gender stereotypes or cultural reconciliation are considered by the judicial officer.

##### Sexual Violence Against Women and Girls Case Analysis

- iii. Analysis of all rape judgments from 2016-2017 that were published on PacLII (91 cases) comprising 89 High Court decisions and 2 Magistrates Court decisions.
- iv. Analyse all decisions in sexual assault cases published on PacLII and decided in the Magistrates Court in 2016 and 2017 (5 cases).

Criminal cases were analysed to consider a range of factors including:

- the forms of evidence presented,
- whether the judicial officer considered gender stereotypes, cultural reconciliation, or other contentious factors, and whether this lead to a sentence reduction.

Positive and negative gender equality messages conveyed by the judicial officer in their judgments were noted.

#### V Case Studies

Analysis of selected cases to consider what worked and what could be improved:

- i. Domestic violence case leading to death
- ii. Legal Aid Commission/ Family Court disability case
- iii. DPP State Counsel/ intellectual disability rape case
- iv. Children's sexual assault case supported by MSP
- v. Rape/ incest case of a woman from the LGBTQI community

## VI Observation of Courts and Registries

FWRM has observed the court registries and hearing of violence and family law cases in selected Magistrates and High Courts.

## VII Survey of legal practitioners in Fiji

23 Legal Practitioners in Fiji working in the area of violence against women and family law completed a detailed survey that includes their views on the Family Law, Domestic Violence and Crimes Acts in Fiji and how their female clients are treated when bringing violence or family law cases to the formal justice system. The legal practitioner survey was advertised through the Fiji Law Society and Fiji Women Lawyers Association as well as through FWRM and other partners' social media sites.

## VIII Survey of women who accessed the formal justice system for their family law or violence matters

Randomised survey of women who sought to address their violence or family law issues through the formal justice system. 49 women were interviewed during August-October 2017 to learn from their recent experience with the police and courts. FWRM will continue to interview women during 2018-2019 in order to build a detailed picture of women's experience with the formal justice system in Fiji.

*Nevertheless, the fact that you were a serving police officer when you raped a 14 year old school girl, does not justify an early release. You were a person who were educated and trained to protect the society for 21 years. It was your duty to protect the society including the victim. Therefore, in my view, you should serve a substantial period of your sentence.*

*- Justice Vinsent S. Perera (HAC082.2016)*

# Case Study 1

## Family Law Appeal: Disability - VMG v NKP 12/TVA/0013

### Case Summary

The initial application was for contact and residence orders for a 1 year old boy made in the Tavua Magistrates Court. The applicant father applied for the child to reside with him. The Magistrate ordered that child live with the respondent mother, who resided in Nasinu, and the applicant, who lived in Tavua, have contact every Monday from 4pm to Tuesday 4:30 pm. The order therefore required the infant child to travel 4 hours each way each week to be with his father.

Around the same time, the mother filed an application against the father for an Interim Domestic Violence Restraining Order in the Nasinu Magistrates Court that was granted. This application was subsequently transferred to the Tavua Court by order of the Magistrate dealing with the contact and residence application before him.

The mother's appeal to the High Court asked the court to consider whether:

- the Magistrate in the Tavua Court had jurisdiction to transfer the DVRO matter to his court
- it was in the best interests of the infant child to be travelling each week to spend time with the father.

Both parties had severe hearing and speech impairments.

### Appeal

The Appeal Court Judge considered the applications and determined that the:

- Transfer of the DVRO matter to Tavua Court be set aside. The judge stated "...the order for transfer is forcing the victim to a jurisdiction where the perpetrator lives. The victim's jurisdiction is miles away from her home. The victim is unable to hear or speak... I would have expected the Tavua court to at least... pay attention to the special facts of the case".
- The Contact orders be set aside and for Tavua Court to decide on alternative contact to take place in Nasinu.

### What worked?

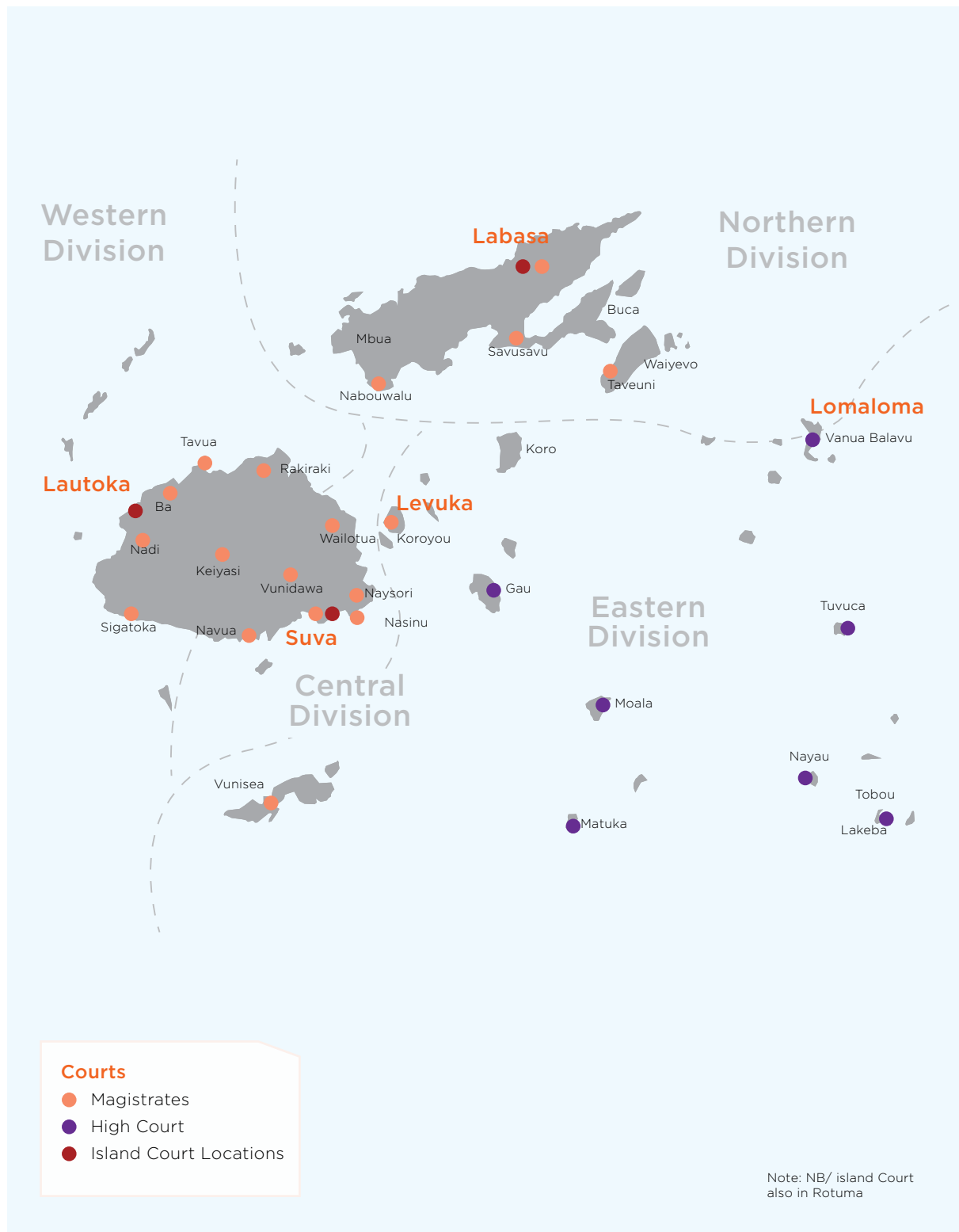
- The Legal Aid Commission represented both parties. The High Court applauded the efforts of the Commission in assisting both the parties given their severe disabilities. It also noted that allocating the files for the parties to different Legal Aid Commission offices ensured that no conflict arose from their representation.
- In the Appeal, the High Court carefully considered the special needs of each party together with the best interests of the child.
- The High Court also expressed disappointment with the way the case was handled at the Tavua Magistrates Court and suggested that the Court ought to have considered the special facts of the case, that is that the mother-victim has special needs, and that the infant child was currently being breastfed.
- The High Court placed great emphasis on bonding between children and parents and that this should be done in a manner that is conducive to the child's best interests.





# DATA ANALYSIS - FAMILY LAW AND VIOLENCE AGAINST WOMEN AND CHILDREN CASES

## Court Locations in Fiji



## Courts

### Court Data – Family Law Cases (Heard in the Family Division of the Magistrates Court and High Court)

#### Filings – Divorce, Maintenance and Restraining Orders

The number of divorce, maintenance, and restraining order applications filed in the Family Court have all increased in the past 5 years.

For the last five years, on average, the Family Court finalised more family law cases than filed, maintaining a clearance rate of over 95%. Specifically,

- Divorce 101%
- Maintenance 99%
- Restraining Orders 104%
- Restraining Orders 87%
- Residence and Contact 106%
- Property 96%

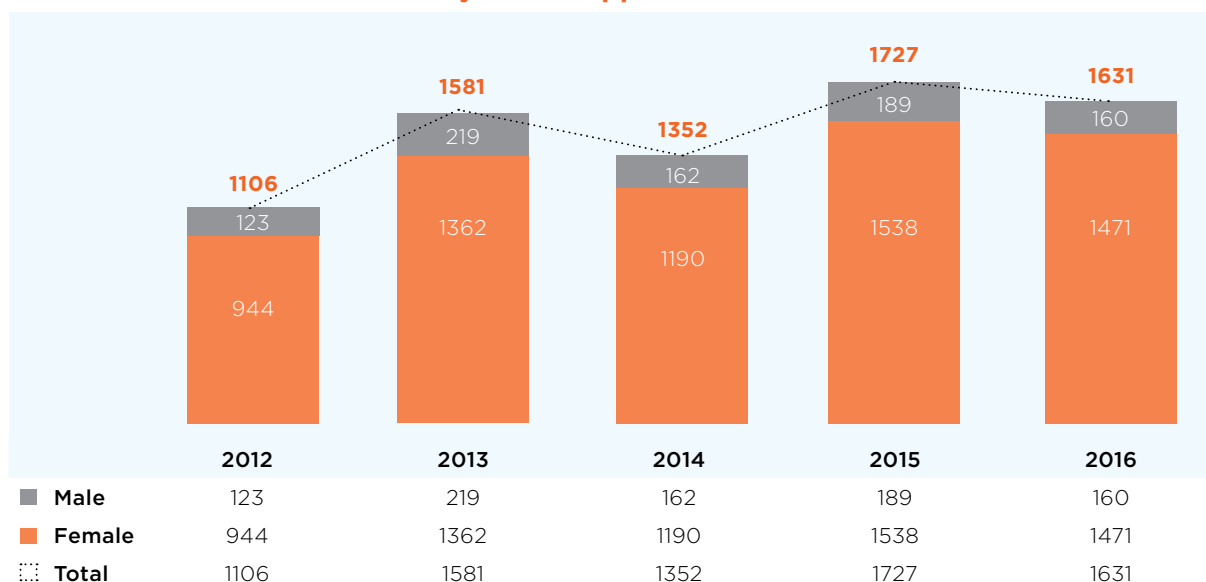
#### Women as applicants:

Women and men initiate similar numbers of divorce cases in Fiji.

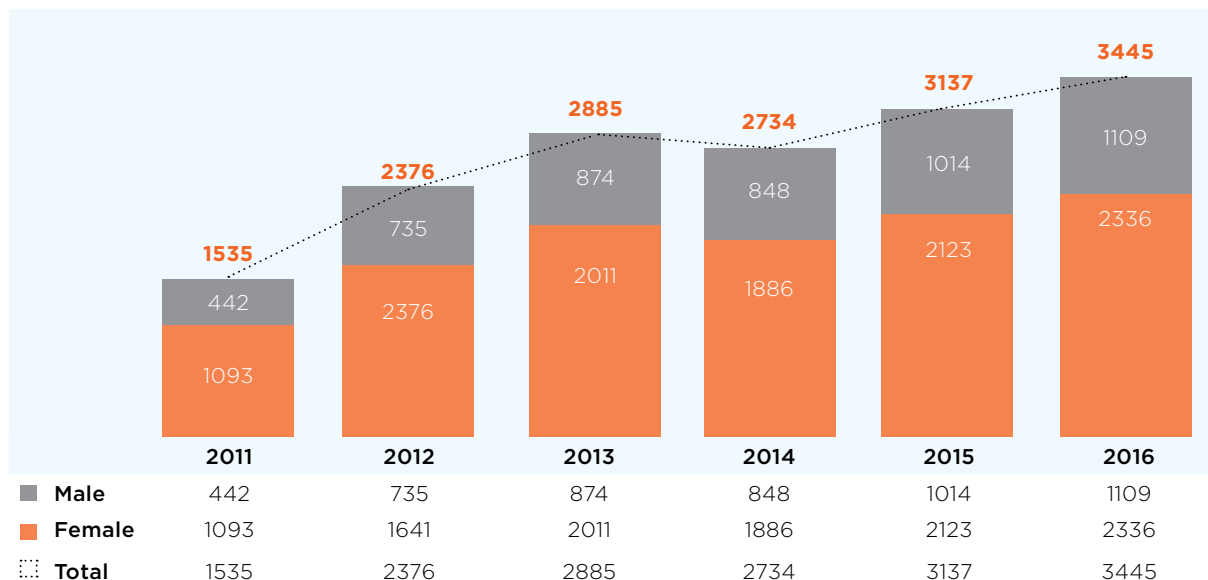
Women applicants in residence and contact (custody) cases increased by 80% between 2012-2016 (from 295 to 531 cases).

As depicted in the following graphs, women were overwhelmingly the applicant party in (i) 9 out of 10 maintenance cases, and (ii) 7 out of 10 restraining order cases filed in the Family Court.

#### Total Maintenance Cases Filed by Sex of Applicant



### Total Restraining Orders Filed by Sex of Applicant

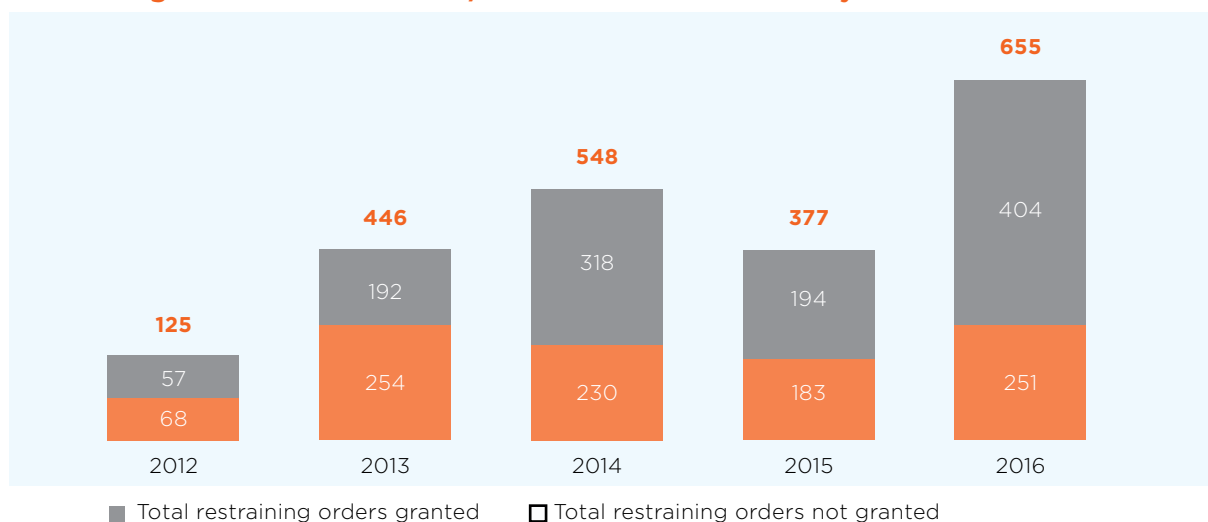


### Restraining Orders

Under the Domestic Violence Act 2009, a domestic violence restraining order may be sought in the High Court and Magistrates Court, including in their family divisions, as well as in a juvenile court. In 2016, 500 domestic violence restraining orders were filed in the family division of the High Court and 3445 domestic violence restraining orders were filed in the Magistrates Court.

Women applying for restraining order cases in the family division of the High Court quadrupled from 97 applications in 2012 to 392 cases in 2016. The High Court rejected more Restraining Order applications than it granted in 2016 (404 not granted and 251 granted). Over the last five years, the Family Court has on average rejected more Restraining Order applications than it has granted. However, 87% of the 3945 Restraining Order cases filed in 2016 were filed in the Magistrates Court, which does not collect data on the outcomes of these cases.

### Restraining Order Cases Granted/ Not Granted in the Family Court



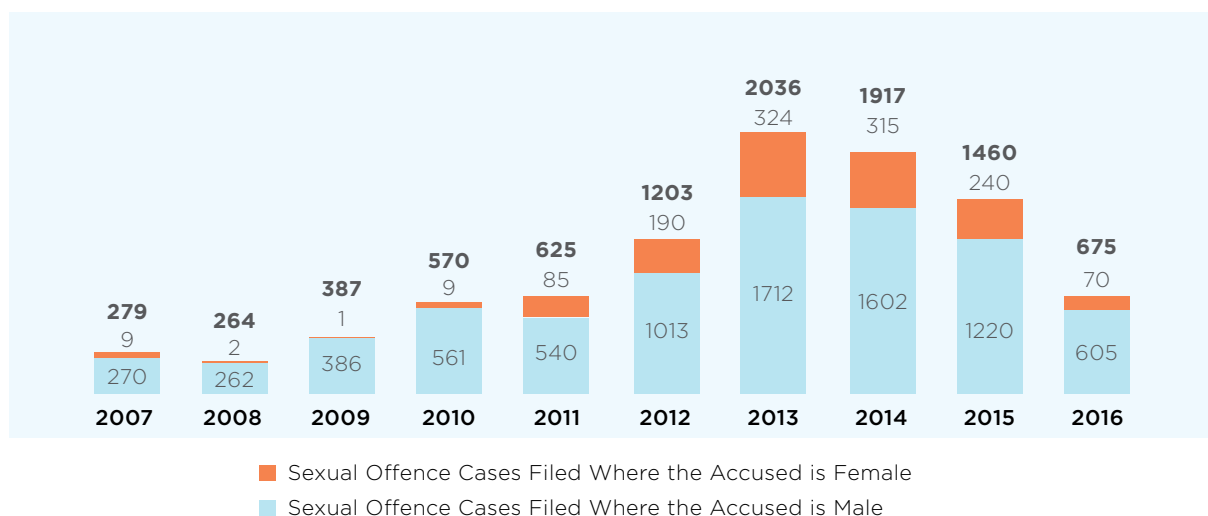


### Court Data – Criminal Cases Involving Violence Against Women

Between 2011 - 2016 in 99% of rape cases filed in the Magistrates Court the accused is male.

Sexual offence cases heard in the Magistrates Court increased from 279 in 2007 to 2036 in 2013. By 2016, the number of cases fell to 675.

### Number of Sexual Offence Cases Filed in the Magistrates Court (by Sex of the Alleged Perpetrator)



For the last eight years, the Magistrates Court has maintained clearances rates of over 90%.

### Transparency

The Fiji Courts collect sex disaggregated data for family law and violence cases. The Court is committed to the swift publication of criminal court cases on PacLII, often publishing judgments within one week of the case being decided in court. In 2016, the Court published more than 1000 cases on PacLII.

The Fiji Courts do not however publish any family law judgments on PacLII as these judgments are not yet redacted or anonymised to remove the parties' names. The Fiji Courts also have not published an Annual Report since 2011.

The Judicial Department has customer feedback forms in the Family Court registry in Suva encouraging feedback from court clients on their experience at the court, what could be improved and what clients would like to see in future.

## Office of the Director of Public Prosecutions and Legal Aid Commission



# Legal Aid Commission

## Legal Aid Commission Gender Data Analysis

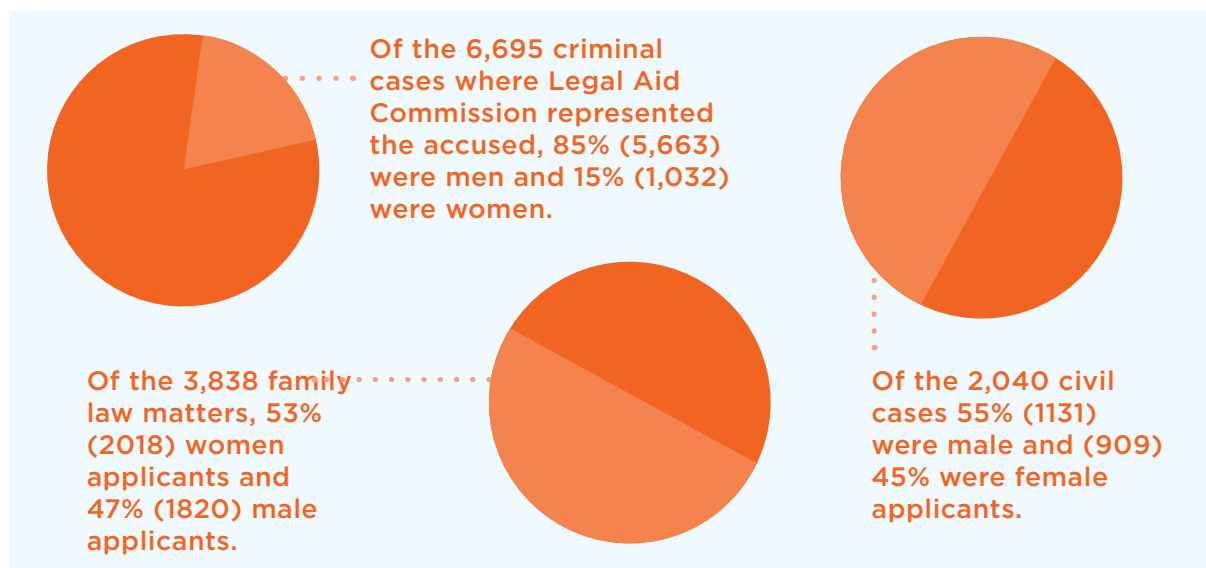
### 2012-2016 Trend Data

- The number of Legal Aid Commission offices has more than doubled from 7 offices in 2012 to 16 offices in 2016.
- The Legal Aid Commission has assisted twice as many men as women due to the fact that the majority of accused in criminal cases are men.
- Four times more men (19,454) are assisted by the Legal Aid Commission in criminal matters than women (4,257).
- The number of women assisted by LAC in family law matters has quadrupled from 532 women in 2006 to 2018 women in 2016.
- More than 6000 women initiated family law or domestic violence restraining order applications in the Fiji courts in 2016. Only 1 in 3 of these women were represented by the Legal Aid Commission.
- The number of women assisted by LAC in civil law matters has increased more than 6 times from 142 women in 2006 to 909 in 2016.

### 2016 Legal Aid Data

- In 2016 the Legal Aid Commission authorised grants of legal aid in 12,573 cases. 69% of these cases involved male applicants and 31% involved female applicants.
- Of these 12,573 cases, 6,695 (53.2%) were criminal cases, 3,838 (30.5%) family cases and 2,040 (16%) civil cases.

### LEGAL AID CASES GRANTED



- In civil and family law cases where the Legal Aid Commission acts on behalf of a client the court fee is waived as the Legal Aid Commission places an "Exemption of fees" stamp on the documents.
- The Legal Aid Commission does not present data in its Annual Reports on the number of requests for legal aid assistance received by men and women each year and the number of these that are granted.
- The Legal Aid Commission does not present data in its Annual Reports on the number of women and men living with a disability that apply for a grant of legal aid.

*Rape is a crime that has no place of acceptance in any civilised society. It is a worse form of physical and psychological infringement of a person's life. It is not only an attack on oneself, but also an attack on acceptable values and norms of our society. The impact of such crimes, could adversely change the life of the victim and all of her family forever. The prevalence nature of the occurrence of such crimes, specially targeting juvenile and young adolescence has become a social menace in our society.*

*– Justice Thushara Rajasinghe (HAC111.2012)*



## Director of Public Prosecutions

### Gender Analysis of Office of Director of Public Prosecutions (ODPP)

The Office of the Director of Public Prosecutions collects sex disaggregated data of certain alleged perpetrators and victims as it referred to in the narrative section of the *ODPP Monthly Updates*. Unfortunately, this sex disaggregated data is not presented in:

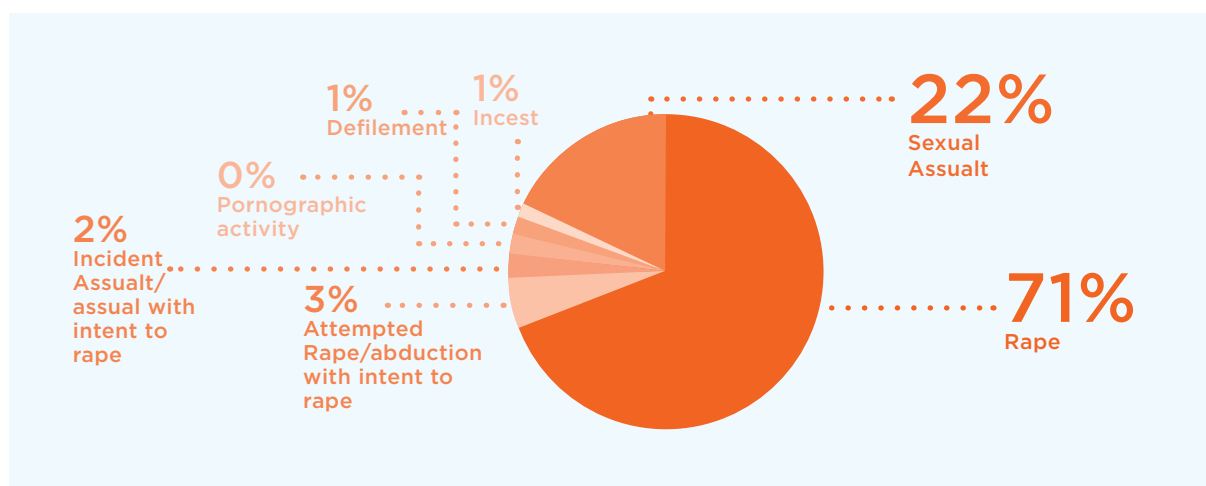
- a. the monthly media updates on Rape and Sexual Offences Statistics or the Serious Crime (Non-Sexual Violence Offences) Statistics
- b. the ODPP website
- c. ODPP Annual Reports, although only one annual report (2014) is publicly available.

It was noted that the State Counsel of the Office of the Director of Public Prosecutions have provided support to women victim/ survivors with a disability to adequately prepare them for court hearings. As a result, the witness has successfully presented evidence and the accused found guilty.

The 2016 ODPP Rape and Sexual Offences Statistics shows that:

- a. Rape accounts for 71% of the sexual assault cases prosecuted
- b. Of these rape cases:
  - i. 59% of victim/survivors is a child (under 18 years of age)
  - ii. 23% are living in a domestic relationship with the offender
  - iii. 9% *nolle prosequi*
- c. The overwhelming majority of sexual offences prosecuted (95%) are committed by adults
- d. Two thirds of the victims of sexual offences prosecuted (64%) by the ODPP are children under 18 years of age

### 2016 ODPP RAPE AND SEXUAL OFFENCES STATISTICS



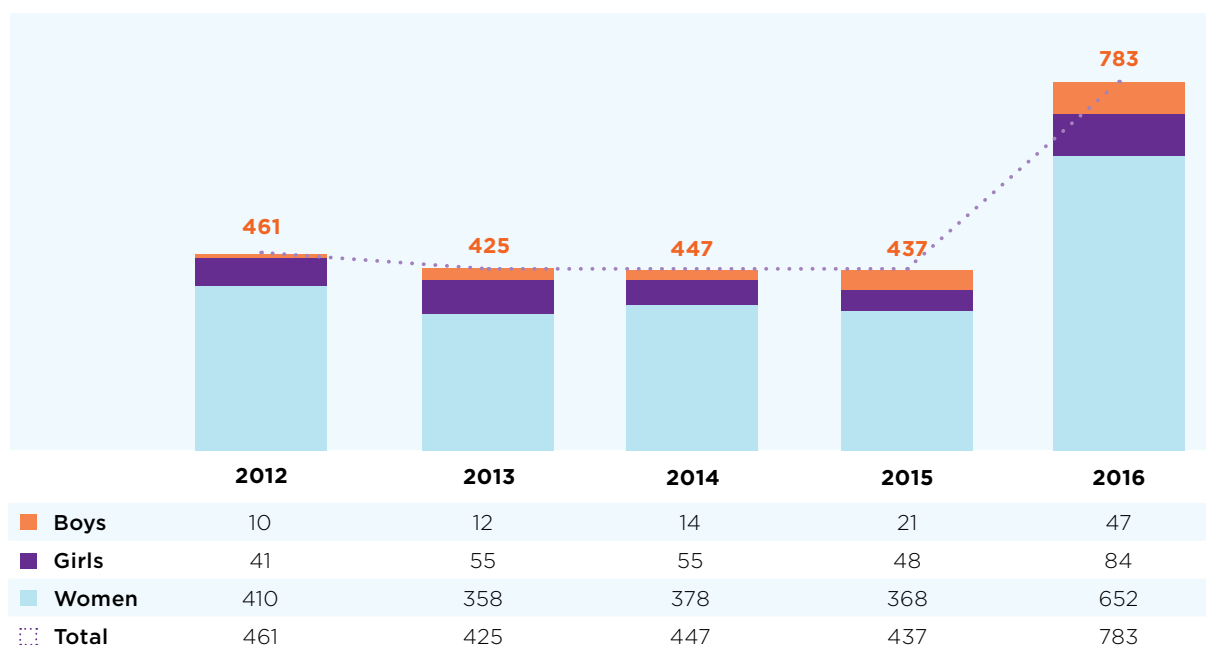
## Fiji Police Locations



## Police

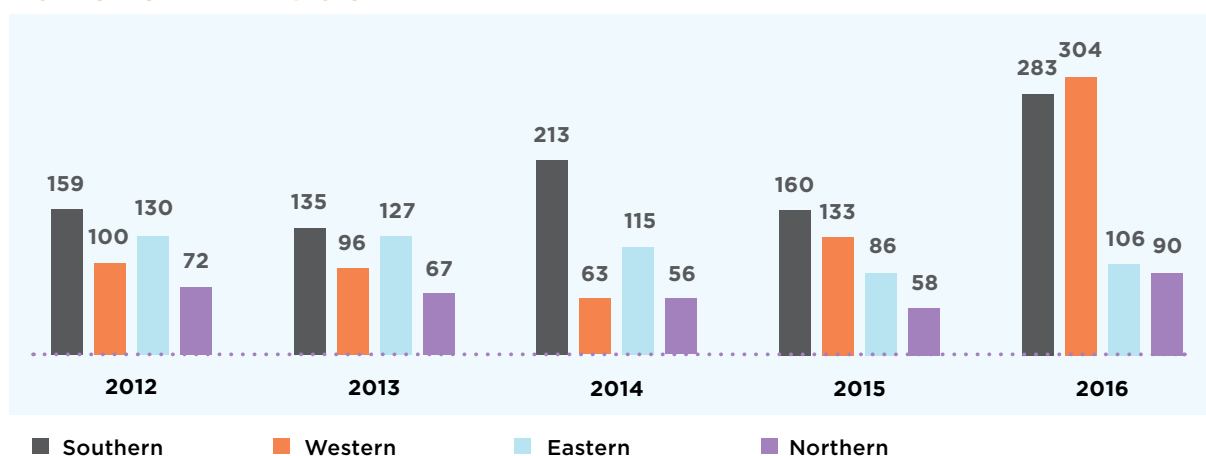
The 2016 Police Annual Report highlighted that the number of domestic violence cases against women and children in Fiji has almost doubled from 2015. This however only represents 20% of the Domestic Violence Restraining Order cases brought to the Courts in the same year.

### DOMESTIC VIOLENCE AGAINST WOMEN AND CHILDREN (UNDER THE AGE OF 17) REPORTED TO THE FIJI POLICE



The biggest increase in domestic violence cases reported over the last five years comes from the western and southern divisions of Fiji.

### DOMESTIC VIOLENCE AGAINST WOMEN AND CHILDREN CASES REPORTED TO THE FIJI POLICE - BY DIVISION



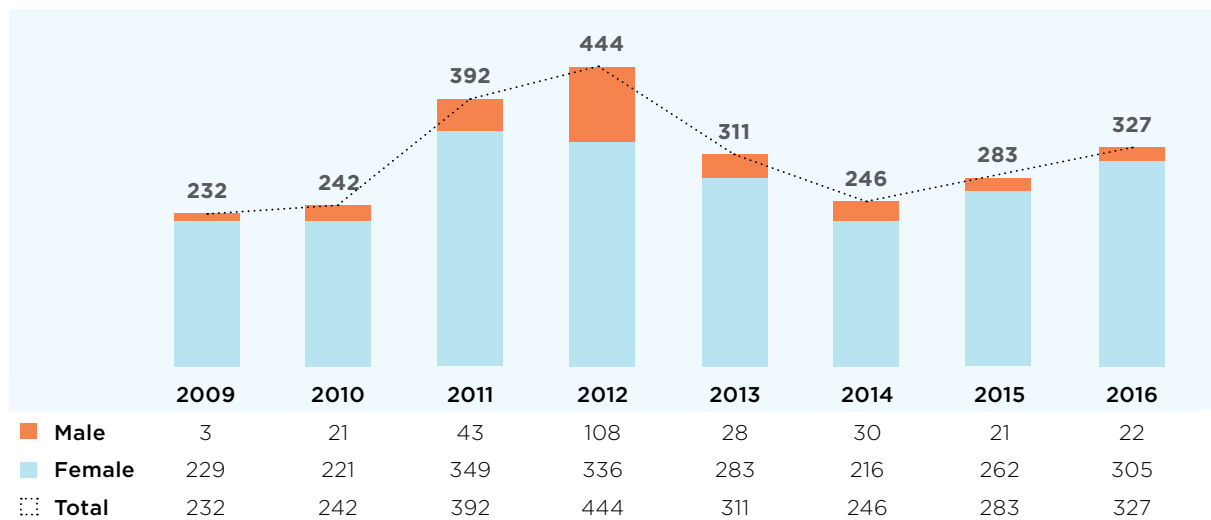
## Balancing the Scales

Improving Fijian Women's Access to Justice

### Sexual Offences

All categories of Sexual Offence cases against women and children (rape and attempted rape, indecent assault, child sexual abuse including incest case) reported to the Fiji police decreased over the last 5-8 years.

#### RAPE AND ATTEMPTED RAPE

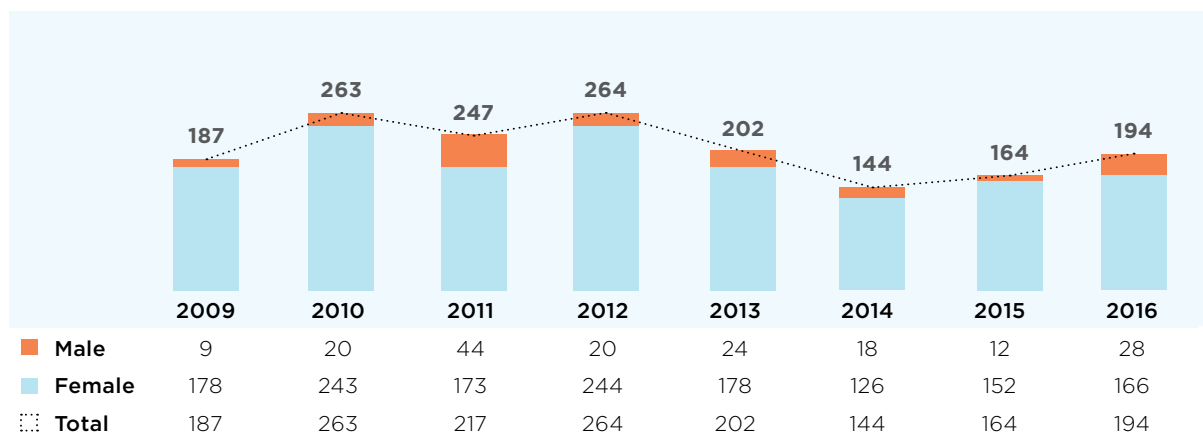


#### SEXUAL ABUSE OF A CHILD (UNDER 17 YEARS OF AGE)





## INDECENT ASSAULT



## Victims and Perpetrators



sexual offence cases (rape and attempted rape, indecent assault, child sexual abuse) reported to the Fiji Police, **women and girls are the victims/ survivors**

cases of Offences Against the Person and Offences Against Morality reported to the Fiji Police **men are the perpetrators**

## Support Services

In 2013, the Fiji Police Force received reports for 283 incidents of rape or attempted rape involving women and girls. In the same year, Fiji Women's Crisis Centre assisted 51 new clients who reported that they had been raped. Only 39 of these 51 clients reported the incident to the Fiji Police Force. Therefore, only a fraction of Fijian women who reported incidents of rape or attempted rape had access to counselling and legal advice.<sup>35</sup>

In 76% (42 of 55) rape cases referred by the Fiji Police Force to Medical Services Pacific (MSP) in 2015 and 2016 a rape kit was sent to the Forensic Pathology Unit of the Fiji Police Force.

## Data

The Fiji Police Force:

- collects sex disaggregated data on the victim and alleged perpetrator of crimes reported
- has only published one Annual Report (2014) that is publicly available
- does not present data on the number of violence against women cases involving referrals from or to support services providing medical, counselling or legal services

The Fiji Police Force publishes data annually:

- Fiji Bureau of Statistics website: <http://www.statsfiji.gov.fj/latest-releases/key-stats>
- Fiji Bureau of Statistics Fiji Facts and Figures publication



Photo credit: UN Women/ Lisa Kingsbury

# Case Study 2

## Intimate Partner Violence: State v Kilaiverata [2016]HAC149.2015

### Background

Fiji's rates of violence against women and girls are among the very highest in the world: 64% of women who have ever been in an intimate relationship have experienced physical and/or sexual violence by a husband or intimate partner in their lifetime. This compares with an estimated global prevalence for physical and/or sexual intimate partner violence over a woman's lifetime of 30%.

Every day in Fiji 43 women are injured, 1 woman is permanently disabled, and 71 women lose consciousness.<sup>36</sup>

### Case Summary

Usaia Kilaiverata on the 4th day of April, 2015, murdered Losana McGowan in Suva. The accused, Usaia Kilaiverata, and the deceased, Losana McGowan, lived together in a defacto relationship at Flat No. 3 Yatu Lau Apartment, Amy Street, Toorak, Suva. On 4 April 2015, the accused assaulted the deceased at their flat. The accused voluntarily surrendered himself to Totogo Police Station at about 7am on 4 April 2015.

The defence case was that the deceased died from injuries resulting from hitting her head on a gas cylinder and an intoxicated person trying to perform CPR.

During the trial Dr. James Kalougivaki, Head of the Forensic Pathology Unit of the Fiji Police Force, was called to give expert evidence. He had conducted the post mortem on the body of the deceased, Losana McGowan. The post mortem report was produced as evidence in the trial. Dr Kalougivaki said in his evidence that it is possible that some, but not all of the injuries were caused by falling on the gas cylinder.

At the completion of the trial, the judge upheld the assessors' unanimous verdict that the accused was guilty of murder. Usaia Kilaiverata was convicted on 1 November 2016 and sentenced to imprisonment for life with a minimum period of 18 years to be served before a pardon may be considered.

### What worked?

- The case involved the conviction of the accused for murder within a year and six months of the offence taking place.
- Losana McGowan had a history of working as a journalist and with Fijian human rights and women's organisations. Due to her contribution, regional and local CSOs kept the media's attention on this case and attended all court hearings.
- The case resulted in a sentence of imprisonment for life with a minimum period of 18 years to be served before a pardon may be considered. This is the mandatory sentence for murder in Fiji.
- Losana McGowan worked for women's' organisations committed to ending violence against women and yet was murdered by her intimate partner. This case highlighted the fact that violence against women happens without regard for a woman's professional or educational background and that a proactive and integrated approach is required to address violence against women.

## Civil Society Organisations





## Medical Services Pacific

FWRM analysed 187 Sexual Assault Response (SAR) cases referred to MSP by the Fiji Police Force in 2015 and 2016. The following is an overview of the findings:

### CASES REVIEWED BY FWRM

	2015	2016	Total cases reviewed
MSP SAR Cases	78	117	195
Files Reviewed by FWRM	72	115	187
Per cent reviewed	90%	98%	95%

- Only 17 (9%) cases have progressed to the formal justice system.
- 6 (3%) of these cases were finalised and the outcomes were:
  - 1 – accused found guilty (one count of rape and four counts of sexual assault)
  - 1 – accused found guilty of a lesser charge (sexual assault)
  - 1 – nolle prosequi (DPP withdrew case because of insufficient evidence)
  - 3 – accused acquitted
- In 100% of cases the perpetrator was a male
- In 95% of cases the victim/survivor was a female
- 73% (136) out of 187 cases the victim/ survivor was 17 years or younger
- 49% (92) victims/ survivors knew the perpetrator before the incident as a friend, boyfriend or acquaintance
- There were 13 categories within the 187 cases reviewed. The following is a breakdown:
  - Rape - 30% (57)
  - Defilement - 28% (51)
  - Sexual assault - 26% (48)
  - Other – 17% (31) (This includes: Abduction, alleged rape, assault, attempted rape, blackmailing, child abuse, human trafficking, indecent assault, marital rape, missing persons, parental complaint, prostitution, sexual harassment)

- In 94% cases the MSP doctor completed a medical report.
- In the six cases that went to Court, five judgments referred to the medical report or the evidence provided by the MSP doctor
- In the 57 rape cases, 42 rape kits were sent to the Fiji Police Pathology Unit (MSP and Fiji Police Force implemented the use of rape kits in 2014)
- Of the 187 cases, MSP provided:
  - 181 clients with counseling services
  - 180 clients with medical services
  - 11 clients with legal services

*There is no difference in this Court between a callow youth and a Pastor and the fact that he regards himself as a “father figure” belies the despicable acts he forced on a 10 year old girl in his permanent care. Such a breach of trust is compounded by the breach of trust by a person in care of another’s child and the breach of trust of a Pastor said to be in charge of the spiritual and emotional welfare of a child. This breach is so serious that even defence counsel recognizes it in his written submissions. Ministers of Religion whilst not being regarded any differently in Court, have a special role in society to care for the development of their followers and above all to set an example by leading a virtuous and noble life in fitting with their calling. This accused clearly failed to live up to those standards.*

*– Justice P.K. Madigan (HAC53.2015)*



Photo credit: Kylepost photography



# Case Study 3

## Rape/ incest of a Woman from the LGBTQI Community - DPP v Veresa [2013] FJMC 73

### Background

The case was initially heard in the Magistrate Court. There was then an appeal to the High Court, State v Veresa [2013] FJHC 361. The accused pursued his case in the Court of Appeal Veresa v State [2014] FJCA 153.

This is a case of a brother raping his sister. The brother, a Special Police Inspector with the Fiji Police was disappointed at hearing rumours that his sister was a lesbian. He confronted, assaulted and eventually raped his sister in an alleged attempt to “correct” her sexual orientation. The Magistrate in the Sentencing ruling, in paragraph 10 made the following remarks to rationalise the motive behind the rape and emphasised the accused’s alcohol intake as a contributing factor:

*“His mind was anomalous. It seems that the act was done by his alcohol, if he was in normal sense he would not have done this act. It is seen that act was done to get rid of homosexual behaviour of the victim (According to the accused) and get affection to men and natural behaviour of sex. It should be noted that there is no single injury in genital areas and the victim was tuned up and ravished before the act. This act was to get affection for natural behaviour of sex. This act was suggested to him by his alcoholic mind. Thus, superficially this is a grave, cynical crime but attended alcoholic circumstance says that is was not done for lust but to chasten the victim from homosexual behaviour. This was a random act and it was not premeditated.” “Normally incestuous rape are done by perpetrators for long period of time on victims and many times but in this occasion it was a single act of rape. I therefore decide to give partial suspended sentence.”*

The Magistrate convicted the Accused of rape under the now repealed Penal Code [Cap 17] and sentenced the Accused to an 8 year partially suspended sentence where imprisonment occurred on weekends only. The Magistrate in deciding on the partially suspended 8 year sentence took into consideration mitigating factors such as:

- That the accused was a first offender and an ex Special Police Inspector
- That the accused was married and babysat his own four children
- That he was the caregiver of his wife’s 64 year old grandmother
- That the matter had been before the courts for five years and that he had suffered humiliation and mental agony in the process
- Furthermore, that he was remorseful for his actions and sought a suspended sentence.

### Case Summary

The case was appealed to the High Court by the Director of Public Prosecutions on the basis that the Magistrate had:

- Made an error in law in issuing a partially suspended sentencing decision on an indictable offence
- Failed to consider section 18(1) of the Sentencing and Penalties Act 2009 in not imposing a non-parole period.



The High Court Judge accepted the grounds of appeal raised by the Director of Public Prosecutions. In reviewing the decision of the Magistrate he highlighted in his Judgment that the mitigating factors were “partially valid”, and that a sentence of 8 years cannot be suspended “because it exceeds the statutory maximum stipulated in Subsection (2) (b)” [of s.26 of *Sentencing and Penalties Act*].<sup>37</sup> The High Court Judge maintained that the Magistrate in failing to state the reasons for his sentencing decision rendered the sentence invalid.

In his Sentencing Ruling, the High Court Judge analysed the accepted mitigating factors cited in the Magistrate's ruling and refers to aggravating factors such as:

- The fact that the accused was a Police Officer during the time of the offence “belies his oath to uphold the law to the best of his ability”
- The victim was the accused's biological sister
- The accused's homophobic wish to “correct” his sister denied her basic human right
- The force and gravity of the physical assault he inflicted upon her before raping her.

The High Court Judge sentenced the accused to 17 years and 8 months with a non-parole period of 15 years. The accused went on to appeal the sentence in the Court of Appeal. This sentence ruling was approved by the Court of Appeal, which set aside the Sentence ruling given in the High Court (17 years) and substituted it with a sentence of eight years imprisonment with a non-parole period of seven years, effective from 29 July, 2013. This reduction in sentence from 17 to eight years was due to the rape case being heard in the Magistrates Court rather than the High Court and difference in the sentences permitted for a rape case heard in the Magistrates Court under the now repealed Penal Code.

### What worked?

- This case study documents how the High Court was able to intervene and correct an error in law that was committed by the Magistrates Court.
- The Office of the Director of Public Prosecutions successfully appealed the Accused's partial sentence from weekend incarceration to a sentence of 17 years and 8 months.
- The High Court raised very strong arguments to support the aggravating circumstances, that were not highlighted in the Magistrate's previous ruling.

*“the accused's homophobic wish to “correct” what he perceived to be his sister's divergent sexual journey. To impose one's own perception of what is normal in a sexual context and to deny another the right to choose his or her own sexual orientation is a denial of a basic human right. It may have been thought noble in the past to insist on sexual conformity but in these days when we see many countries allowing civic recognition to, and even marriage of same sex partners, then nobody (and especially not one's sibling) has the right to dictate what another's sexuality should be”.*

The case was amplified in the media after the Magistrate's Ruling, and generated extensive public opinion on the case:

- **Fiji Sun** – <http://fijisun.com.fj/2013/03/19/state-appeals-rape-sentence-2/>
- **Fiji Village news item** – <http://fijivillage.com/news/Former-police-officer-remanded-in-custody-for-raping-sister-r529sk/>



# OBSERVATIONS OF COURTS AND REGISTERIES

## Observations of Courts and Registries

### Observations of Courts and Registries

During April and July, FWRM attended the following court registries and observed the hearing of family law and violence related cases in the Magistrates and High Courts.

Courts Attended:

- 1 Suva High Court
- 2 Suva Family Court Registry
- 3 Lautoka High Court
- 4 Lautoka Family Court Registry
- 5 Labasa Family Court Registry
- 6 Nausori Family Court Registry
- 7 Nausori Magistrates Court
- 8 Nasinu Family Court Registry
- 9 Ba Family Court Registry

From these visits to the Courts, the following observations were made:

The Fiji judiciary hears all High Court cases in three locations only: Suva, Lautoka and Labasa, whereas the Magistrate Court matters are heard in the fourteen Magistrates Courthouses and in Kadavu, Lau/ Lomaiviti and Rotuma islands where Island Court sittings are scheduled.

The Fiji Court do not have posters or other information available for the public on how they might be able to have their court fees waived in cases of financial hardship for family law and other civil matters.

Court information brochures were displayed in Ba, Lautoka, Labasa, Nausori, Nasinu and Suva family court registries. Court Forms were also readily available at each registry for the public and court staff provide procedural advice to litigants about forms and applications. However, Court clerks need to provide clear and uniform information on family law to clients.

Other than the Nausori Family Registry, no Court has a space for children to play while their parents are attending court. Regrettably, the Nausori play room for children was locked at the time FWRM visited the court although children were present in the Registry waiting room. Additionally, none of the Family Law Registries have a room set aside for nursing mothers who bring their children with them to Court to change or feed their children.

There are varying degrees of accessibility at Family Court Registries for those with a mobility impairment. The Family Court Registries in Nausori and Lautoka are accessible to litigants with a mobility impairment. The Ba Family Court Registry is located on the first floor of the court complex and does not provide any alternate access for those litigants with mobility issues.

It was noted in Courtroom Observations that litigants bring multiple family law proceedings to the court which are heard separately. Litigants therefore face long delays because these proceedings are heard separately.

In the cases observed by the FWRM research team, the Magistrate clearly explained to both parties court procedures, time frames and legal expectations. However, women and men bringing DVRO applications lack understanding of the legal grounds for filing a DVRO application resulting in the application being denied.

*This is a case of sexual exploitation of a young girl by a known family member within her own domestic environment. She is your step-daughter. The victim has considered you as a father figure at the house. The family environment is the most protective and appropriate environment for a young girl to grow up with confidence and safety. Close family members and relatives are the most trusted and dependable people of any person's life. Therefore, sexually assaulting a young girl within her own family environment by a known family member is one of the outrageous forms of sexual crime. In view of the seriousness of these offence, it is my opinion that such offenders must be dealt with severe and harsh punishment.*

*- Justice Thushara Rajasinghe (HAC21.2013)*



# Case Study 4

## Rape Case Study - State v Ami Chand HAC 07 of 2014

### Background

The Complainant, a young mother of two with an intellectual disability, was molested and raped by her elderly neighbour.

### Case Summary

In December 2014, in the interior of Ba, Western Division of Fiji, the complainant was preparing breakfast for her family, when her neighbour, Ami Chand, tied a rope around her waist and dragged her to his house next door and raped her.

The Complainant's young daughter saw her mother being molested and told her father about it the following day. A few days after the rape, the Complainant reported the matter to the police, and Ami Chand was arrested.

A relative of Ami Chand later forced the Complainant to sign a Statutory Declaration stating that the complaint made against Ami Chand was false and requesting the withdrawal of the charge.

During the trial, the complainant was extensively and aggressively cross-examined by the Defence Counsel. At one point the complainant broke down in tears. The Defence Counsel wanted to continue to question her, however the Judge stated that the questioning was traumatizing the Complainant and ordered a short break. During the break, the State Counsel comforted her, which enabled her to return to the court to give further evidence.

Ami Chand was found guilty of rape and sentenced to eight years imprisonment.

### What Worked?

- The State Counsel assisted the Complainant to prepare for the trial by meeting with her on a number of occasions to:
  - explain the court process
  - show her where she would need to stand to give her evidence, and
  - explain the role of the various court officials and lawyers and where each would be sitting during the trial
- On the day of the trial, Counsel explained that there would be a court clerk who would act as the interpreter in the case and explained how she would interpret what she was saying for the judge.
- The State Counsel provided advice on giving evidence by explaining that she should not rush her answers and ask both defence counsel and the prosecution to repeat the question if she didn't understand.
- There was an occasion during the trial when the interpreter was having difficulty explaining a legal document. The State Counsel, noting the Complainant's intellectual disability, intervened and explained it in simple terms so that she could understand what the questions were.
- The Judge further assisted the Complainant by quickly intervening when the Defence Counsel's method of questioning was traumatising her and allowed her to take a break when she became upset during cross examination.

Photo credit: Kylepost photography

A photograph of a woman in a yellow headscarf and a floral patterned top, looking off to the side with a serious expression. The background is a blurred outdoor setting with other people and structures. An orange rectangular overlay covers the bottom half of the image, containing the text 'JUDGMENT ANALYSIS' in white capital letters.

# JUDGMENT ANALYSIS

## Family Law Cases

FWRM analysed 260 Family Court Appeal and First Instance cases decided in the High Court from 2015-16 to consider:

- where the case was heard
- sex of the applicant or appellant
- how they were represented in their case

The analysis shows:

The 260 cases were heard at the following High Court locations:

- Labasa - 4%
- Lautoka - 52%
- Suva - 43%

There are similar numbers of men and women bringing their family law cases to the High Court

Representation:

- 43% of women have no legal representation compared with 35% of men.
- 10% of cases brought by either men or women are represented by the Legal Aid Commission.
- 49% of men and 42% of women pay for private legal representation

A detailed analysis of a randomised sample of 25% of these Family Court cases (67 of the 260 cases) found that no instance of gender stereotypes, customary forms of reconciliation or other contentious factors were raised by the judicial officer.

*As in all cases of family rape, of which unfortunately there are too many in Fiji, there has been a gross breach of trust: a breach of trust given to him by the mother and a breach of the trust given by a young child in his care. That has to be a serious aggravating factor along with the aggravation of nocturnal abuse while the child was sleeping.*

*- Justice PK Madigan (Criminal Case 35.2016)*

## Sexual Violence Against Women and Girls Case Analysis\*

FWRM analysed all rape judgments from 2016-2017 that were published on PacLII (91 cases) comprising 89 High Court decisions and 2 Magistrates Court decisions.

Under Section 4(1)(a) of the *Criminal Procedure Act 2009* indictable offences can only be tried in the High Court. Prior to the revision of the Criminal Procedure Act, rape cases could also be heard in the Magistrates Court, which explains why two of the rape cases analysed were heard in the Magistrates Court.

FWRM analysed all sexual assault judgments from the Magistrate Court that were published on PacLII (5 cases) in 2016 and 2017.

These judgments were analysed to consider a range of factors including:

- the forms of evidence presented,
- whether the judicial officer considered gender stereotypes, cultural reconciliation, or other contentious factors, and/or whether this lead to a sentence reduction.

Positive and negative gender equality messages conveyed by the judicial officer in their judgments were noted.

The average starting sentence for the 90% found guilty of rape was 10 years and 6 months. The average final sentence was 10 years and 10 months. Therefore, the judicial officers on average added more months to the sentence for aggravating factors than they removed for mitigating factors.

### High Court 2016 & 2017

#### Sexual Violence Against Women and Girls Rape Case Analysis

#### 2016 – 62 High Court Judgments Analysed

Overview of the 62 rape judgments in the High Court in 2016 analysed:

- in 100% of cases, the perpetrator was male
- the average age of the perpetrator was 38 years of age
- 68% (42 cases) involved girls aged 3 to 17 years as the victim survivor
- 32% (20 cases) involved women as the victim survivor
- 2% (1 case) involved a girl aged 10 with a disability
- only 1 case relied on a forensic pathology report

\*This decision analysis adapted the ICAAD's methodology for reviewing GBV cases that appears in ICAAD & DLA Piper (2015) *An Analysis of Judicial Sentencing Practices in Sexual and Gender-Based Violence Cases in the Pacific Island Region*.

Outcomes of the 62 rape judgments analysed:

- 90% (56 of 62) accused found guilty of rape
  - 8% (5 of 62) accused was found guilty of a lesser charge
  - 2% (1 of 62) accused was acquitted
- Of the 62 rape cases decided in the High Court in 2016:
- In none of the 62 rape cases decided were customary forms of reconciliation raised by the judicial officer.
  - In 27% (17 of 62) of cases the judicial officer reduced the sentence for the accused on the basis that the accused was a 'sole breadwinner'.
  - In 3% (2 of 62) of cases the defence counsel raised the defendant being the sole breadwinner, however the judicial officer did not allow this to form the basis of a sentence reduction. Their refusal was based on the case authority *Raj v State* decided in March 2014 in which the Court of Appeal stated:

*"Legitimate aspects of mitigation will include a clear record, proven remorse, mental disorder but not family circumstances because the perpetrator has by his conviction for the crime done everything within his power to destroy the fabric of the family unit."*<sup>38</sup>

## 2017 – 27 High Court Judgments Analysed

Of the 27 rape judgments in the High Court in 2017 analysed:

- 100% of perpetrators were male
- The average age of the perpetrator was 39 years of age
- 37% (10 cases) involved girls aged 4 to 17 years as the victim survivor
- 63% (17 cases) involved women as the victim survivor
- 4% (1 case) involved a woman with a disability
- only 1 case referred to a forensic pathology report however, the accused was acquitted

Outcomes of the 27 rape judgments analysed:

- 52% (14 of 27) accused found guilty of rape
- 11% (3 of 27) accused was found guilty of a lesser charge
- 37% (10 of 27) accused was acquitted

The average starting sentence for the 52% found guilty of rape was 10 years. The average final sentence was 11 years and 6 months. Therefore, the judicial officers on average added more months to the sentence for aggravating factors than they removed for mitigating factors.



## Balancing the Scales

### Improving Fijian Women's Access to Justice

Of the 27 rape cases decided in 2017:

- In none of the 27 rape cases decided were customary forms of reconciliation raised by the judicial officer.
- 4% (1 of 27) of cases the judicial officer reduced the sentence for the accused on the basis that the accused was a 'sole breadwinner'.
- 4% (1 of 27) of cases the defence counsel raised the defendant being the sole breadwinner, however the judicial officer did not allow this to form the basis of a sentence reduction in these cases based on the case authority *Raj v State*.

50 of the 89 (56%) rape cases reviewed in the High Court were the subject of an appeal.

## Circuit Courts

Of the 27 rape cases decided in 2017, 4 were heard at Island Court locations.

Of these 4 cases:

- 2 cases, the accused was acquitted
- 1 case the accused was found guilty
- 1 case the accused was found guilty of a lesser charge.

One of these cases involved a victim/ survivor with a disability.

## Magistrates Court 2016 & 2017

### Sexual Violence Against Women and Girls Case Analysis

#### Magistrate Court - Rape Judgments

FWRM researchers found 2 rape judgments from the Magistrate Court that were published on PacLII in 2016 and 2017.

Of the 2 rape judgments analysed:

- 1 case the accused was found guilty of rape (heard at an Island Court sitting)
- 1 case the accused was a juvenile offender and was acquitted
- No cases submitted or presented forensic pathology reports to the court.

The following is an excerpt from the judgment:

*"There is a misconception among some men in the society that a girl who is agreeing to have drinks with them also willing to be their sexual partner. The people need to change this attitude. Being under the influence of alcohol or drugs is not an invitation from the girl for non-consensual sexual activity. Further even though this incident happened in 2006 the victim had to wait for nearly 11 years to get her justice. It would have been nightmarish experience for her in past 11 years to see the accused walking free whilst she was suffering physically and emotionally alone. Finally with this sentence this court hopes she would be able move with her life."*

### Magistrate Court - Sexual Assault Judgments

Of the 5 sexual assault judgments analysed:

- 100% of the perpetrators were male (average age 54)
- 100% victims/ survivors were from rural villages and settlements
- 100% of victims/ survivors were young girls aged 5 years or younger
- Average age of the victim/ survivor was 3 years 8 months
- Average days from incident to judgment was 741 days
- 80% (4 of 5) accused pleaded guilty of sexual assault
- 20% (1 of 5) accused was acquitted

Of the 4 found guilty of sexual assault:

- average starting sentence was 2 years 9 months
- average final sentence was 2 years and 4 months
- In 3 of the 4 cases the judicial officer reduced the sentence due to mitigating factors that included:
  - I First time offender
  - II Remorseful/seeking forgiveness
  - III Cooperated with police
  - IV Early guilty plea
  - V Age of the perpetrator (elderly offender)

In all four cases, the judicial officers on average removed more months for mitigating factors than they added for aggravating factors.

In none of the 5 sexual assault cases decided in 2016 and 2017 in the Magistrate Court were gender stereotypes or customary forms of reconciliation considered by the judicial officer.

The following is an excerpt from the judgment by the magistrate in a sexual assault case where the accused was found guilty.

*"With the increase number of sexual offences against the children in this country the time has come to give deterrence sentences to curb this trend and to protect the children. ... I sentenced you to 04 years imprisonment for this offence with a non-parole period of 02 years. For the safety of the victim I also issue a permanent domestic violence order with standard non-molestation conditions."*



Photo credit: Kylepost photography

# Case Study 5

## Child Sexual Assault: State v Inia Rayalo HAC 400 of 2016

### Background

Medical Services Pacific (MSP) has a Memorandum of Understanding with the Fiji Police Force (FPF) under which the police refer non-emergency rape and sexual assault cases to MSP. Under the MOU, MSP provides free medical examination, clinical care and counseling to sexual assault victims that have been referred by the FPF once a written consent has been obtained by the FPF from the victim.

In 2015, MSP presented in its Annual Report that it supported 78 women and children as part of its Sexual Assault Response One Stop Shop and in 2016, 117 women and children.

### Case Summary

The child aged four years, complained to the mother about the sexual assault on 22 October 2016 and was taken to the Police on 25 October 2016 to report the matter. The Police then referred the mother and daughter to MSP where they were provided with medical, counseling and legal services. A medical report for the child was completed by MSP's full-time doctor at the MSP office.

During the trial the child was in a separate room and gave evidence via a video -link. The mother told the court the information relayed to her by the child. The doctor gave evidence in relation to the injuries she noted during the medical examination. The defense case was that the incident did not take place.

At the completion of the trial, the judge upheld the assessors' verdict that the accused was guilty in relation to the sexual assault charge and not guilty in relation to the rape charge. Inia Rayalo was convicted on 1 May 2017 and sentenced to 5 years imprisonment.

### What worked?

This case study documents one case in which the mother of a four-year old girl reported a case of sexual assault to the police. Under the MOU with MSP, the police referred the mother and daughter to MSP where they received integrated medical, counseling and legal support.


The case involved the conviction of the accused on the count of sexual assault within six and a half months of the offence-taking place. The expeditious handling of this case is beneficial for the young victim/ survivor and her family and also demonstrates that the Fiji justice system can successfully conclude cases that require sensitive handling within a relatively short period of time.

The case resulted in a sentence of five years imprisonment for the sexual assault. This is in the middle range of sentences for sexual assault in Fiji. The offense of sexual assault carries a maximum 10 years' imprisonment. There is no established tariff for sexual assault committed involving children. In *State v Epeli Ratabacaca Laca*, Justice Paul Madigan set the tariff for the offence between 2 and 8 years' imprisonment, the higher tariff being set for serious sexual assaults.

The child was examined and cross-examined through a video-link and was not in the courtroom during the trial. This practice reduces the trauma that a young victim/survivor may experience in a sexual assault trial.



Photo credit: Kylepost photography



# SURVEY OF WOMEN'S EXPERIENCE OF THE FORMAL JUSTICE SYSTEM

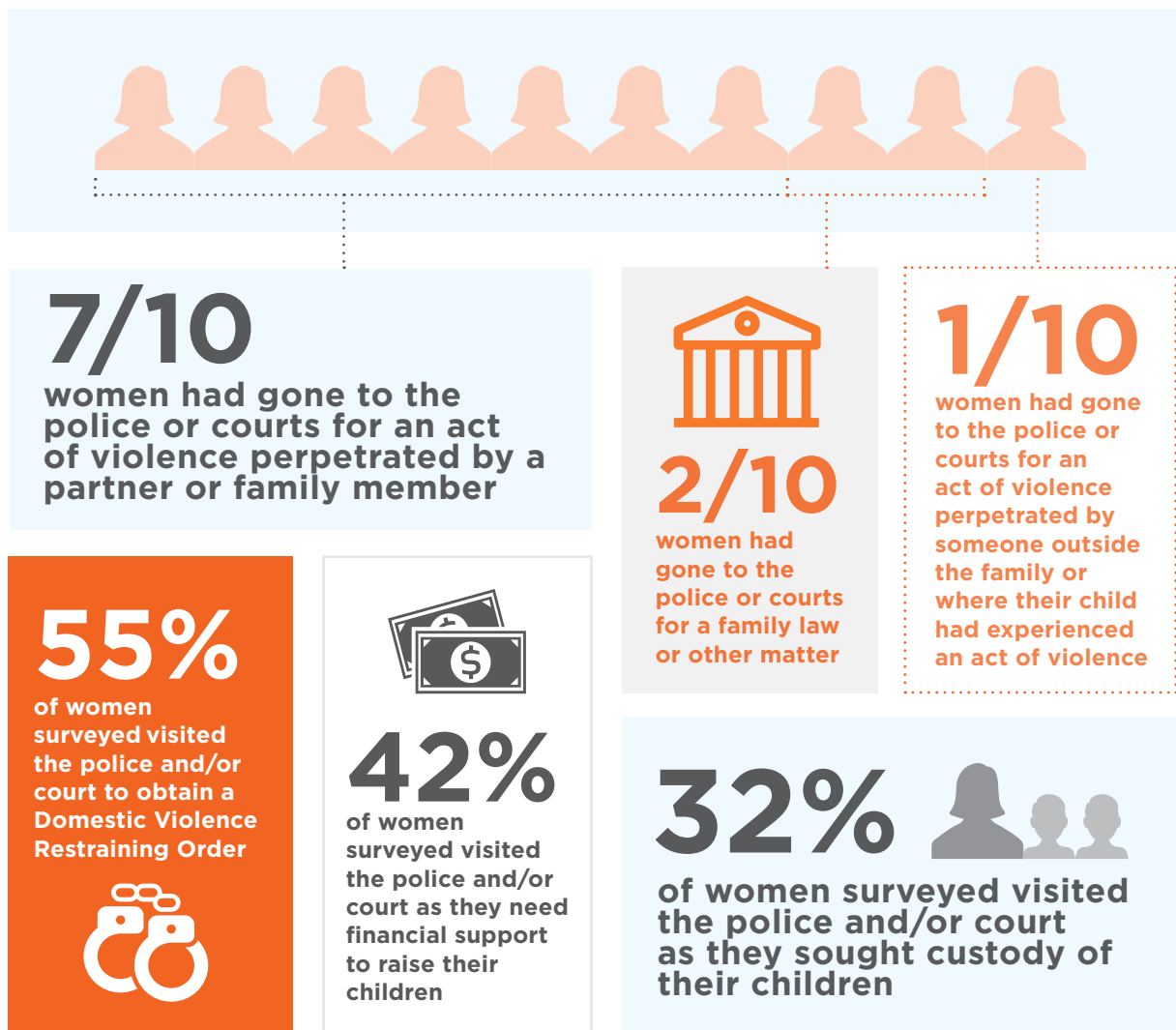


## Women's Survey

FWRM requested women to participate in this survey through a campaign advertised in the Fiji Times, social media and on community radio, FemLink Pacific 89.2. From this advertising, 64 women responded. 15 of these women have not been included in the results as they had not approached the police or the courts to resolve their family law matter or family violence issues.

The remaining 49 women identified as having had a family law issue or having experienced violence and approached the police or courts. These women, from the Central, Western, Eastern and Northern divisions of Fiji, were interviewed from August 30 to October 13 2017.

### OF THE 49 WOMEN WHO PARTICIPATED IN THE SURVEY



The women surveyed **experienced violence for an average of 868 days** before they went to the police or courts to resolve these issues

**Half of the 45 women that accessed the police or court stated they wanted the violence to stop**



**2/3**

women surveyed (64%) went to other people or organizations to seek help before they went to the police or courts yet only 6% said that this had fully resolved their issues

#### OF THESE WOMEN

**47%**

approached a family member

**20%**

went to a women's organization

**17%**

went to a health clinic or a medical centre

**10%**

went to Community Legal Centre/ Legal Aid Commission/ free legal services

**6%**

went to a Church or faith-based organisation

**The women surveyed approached these people/ organisations after hearing about them through:**

- **67% - friend/word of mouth**
- **28% - referral from another organisation**
- **5% - radio**

Of the 49 women who participated in the survey:

- 22 women sought a domestic violence restraining order, 20 of these women were successful in obtaining one
- 12 women sought spousal or child maintenance, 11 of these women were successful
- 13 women sought a court order for child custody, 11 of these women were successful
- 9 women sought a divorce, 8 of these women were successful
- 11 women still had cases underway
- 2 women were reconciled with their partner

Note: some women sought more than one remedy.

**2 in 3 women surveyed faced difficulties in going to the police or court:**

- 60% said the police told them to resolve the issue within the family or village or the police did not take them seriously
- 30% said they did not know about the court process or where to go
- 10% said they faced fear of stigma or physical attack

**8 in 10 women rated the following factors as important, very important or critical when deciding to visit the police or court with their family law or violence matter.**

- concern for their children
- access to legal advice and/ or support
- lack of financial means

**7 in 10 women surveyed rated these factors as important, very important or critical in deciding to visit the police or court with their family law or violence matter.**

- fear of retaliation
- concern for how they will be treated by the judges of the court
- fear of discrimination and victimization
- access to medical and/or counseling services
- women's religious beliefs

**6 in 10 women surveyed rated these factors as important, very important or critical in deciding to visit the police or court with their family law or violence matter.**

- how they will be treated by the court staff
- views of family and /or community
- access to housing
- how they will be treated by the police.

**9 in 10 women who accessed the courts were successful in obtaining a domestic violence restraining order, child custody or maintenance order, or divorce.****6 in 10 women said they needed assistance to read written documents.****7 in 10 women said that they had to seek assistance to complete a written document.****3 in 10 women survey respondents stated that they wanted to see improvements in the issuing, serving and information provided on domestic violence restraining orders.****5 in 10 of the women said that they were aware of the Fiji Women's Crisis Centre and the Legal Aid Commission as service providers of counselling, medical or legal services for women who are facing violence.**

### Women's Perceptions of the Courts

Finding the courthouse was easy for me		81%
I was treated with courtesy and respect by judicial officers		80%
The court makes reasonable efforts to remove physical and language barriers to service		79%
I was treated with courtesy and respect by court staff		79%
Court staff provided clear information on the court process for my case		71%
I felt safe in the courthouse		67%
The forms I needed were clear and easy to understand		55%
The court's hours of operation made it easy for me to do business		55%
I was able to get my court business done in a reasonable time		48%
The court alerted me if a hearing was postponed		48%
The Court's website was useful		5%

### Police

Of the 49 women who participated in the survey, 45 (92%) stated that they had gone to the police at some point during their case. Of these 45 women:

- Only half said they felt safe in the police station
- 8 said the police had sexually harassed or threatened them
- 17 were referred to other services such as safe housing, medical, and counseling services


Six in 10 women said the police treated them with courtesy and respect while they made their statement at the police station, listened to their account of what had happened and included all their points in the statement.

Four in 10 women who had been to the police said that the police:

- tried to act as counselors and reconcile them with their partner
- refused to take any action following their complaint
- delayed serving the domestic violence restraining order

55% of women surveyed said that cultural norms were not important or less important for their decision to access the police or courts.

Photo credit: UN Women/Ellie van Baaren. December 2015

A photograph showing several orange plastic caps hanging from strings. The word 'WOMEN' is written in purple on the central cap. In the background, there is a large, wrapped object, possibly a gift, with orange and white floral patterns. The scene is dimly lit, with some light sources visible in the background.

# SURVEY OF LEGAL PRACTITIONERS IN FIJI



## Survey of legal practitioners in Fiji

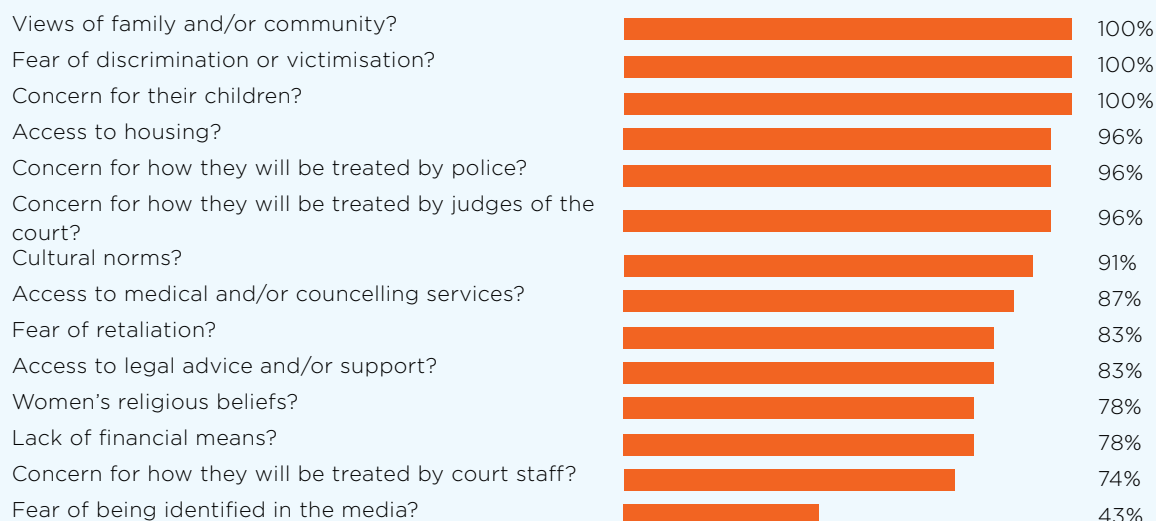
23 Legal Practitioners in Fiji working in the area of violence against women and family law completed a detailed survey that includes their views on the Family Law, Domestic Violence and Crimes Acts in Fiji and how their female clients are treated when bringing violence or family law cases to the formal justice system.

The legal practitioner survey was advertised through the Fiji Law Society and Fiji Women Lawyers Association as well as through FWRM and other partners' social media sites.

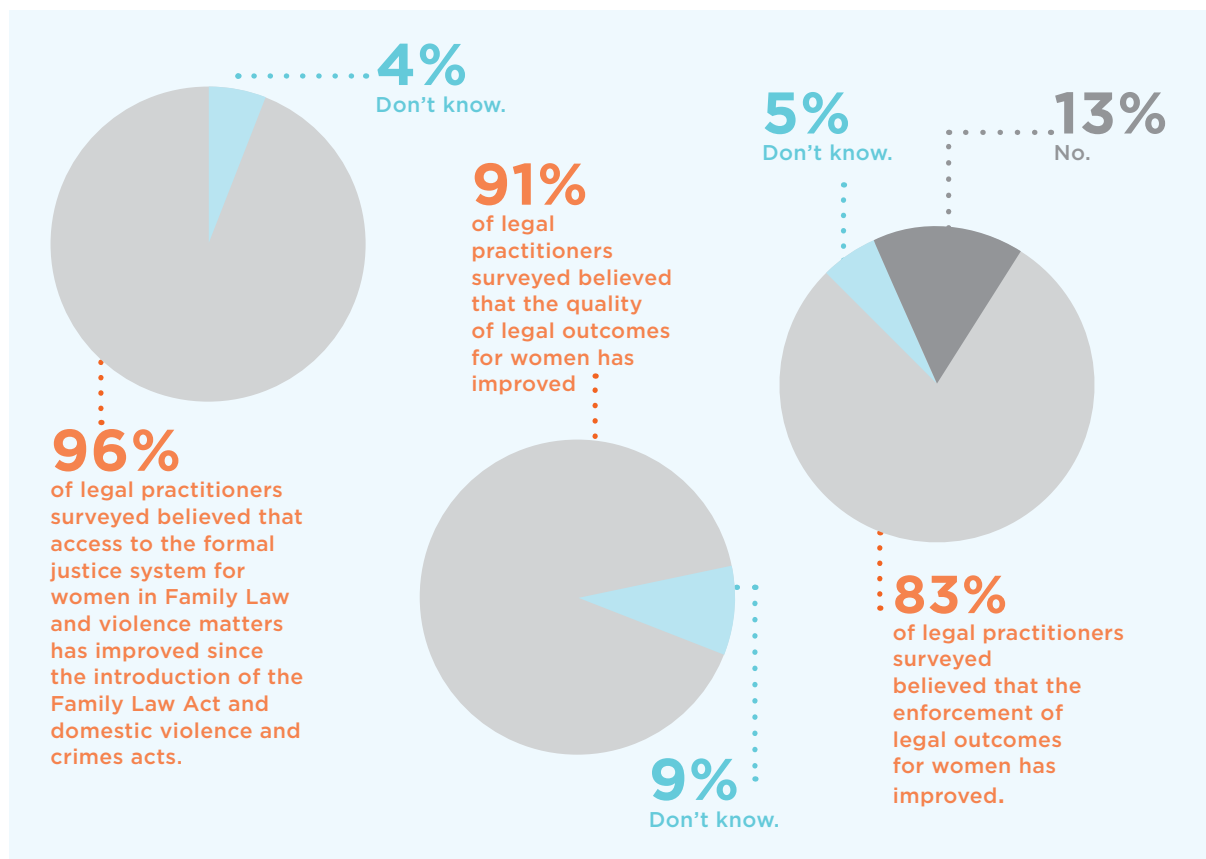
The following is a summary of the key issues raised by legal practitioners interviewed:

- Legal practitioners identified that women's concern for their children, fear of discrimination or victimisation and the views of family and/or community were the most important issues for women when accessing the formal justice system.
- Legal practitioners also identified that women are concerned about how they would be treated by police and judges and this influenced their decision on whether they would access the formal justice system.

### KEY CONCERNS IDENTIFIED BY LEGAL PRACTITIONERS AS TO WHAT INFLUENCED A WOMAN'S DECISION TO ACCESS THE FORMAL JUSTICE SYSTEM



## WHAT FIJI LEGAL PRACTITIONERS SAID ABOUT THE FORMAL JUSTICE SYSTEM



Since the introduction of the Family Law Act 2003 and the *Domestic Violence Act* 2009 and the Crimes Act 2009:

- Of the three quarters of the legal practitioners who answered the question, 70% or more believed their clients obtained a 'fair, effective and durable remedy' through the formal justice system.
- Almost all of the practitioners who answered the question agreed or strongly agreed that they were treated with courtesy and respect by the judicial officer and the staff of the court. The majority agreed that finding the courtroom was easy for their client and that the court makes reasonable efforts to remove physical and language barriers to service. Three quarters of the practitioners believed that their client felt safe in the courthouse when that were not with them.

More than 80% of practitioners surveyed believed that the judge had the information necessary to make good decisions in the case; that the judge listened to the client's side of the story; and believed that the case was fairly handled. All practitioners knew what to do next about their client's case when they left the courtroom.

Of those practitioners that answered this question, almost half believed that the police tried to reconcile the parties; refused to take any action and delayed serving the violence restraining order.

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## Balancing the Scales

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